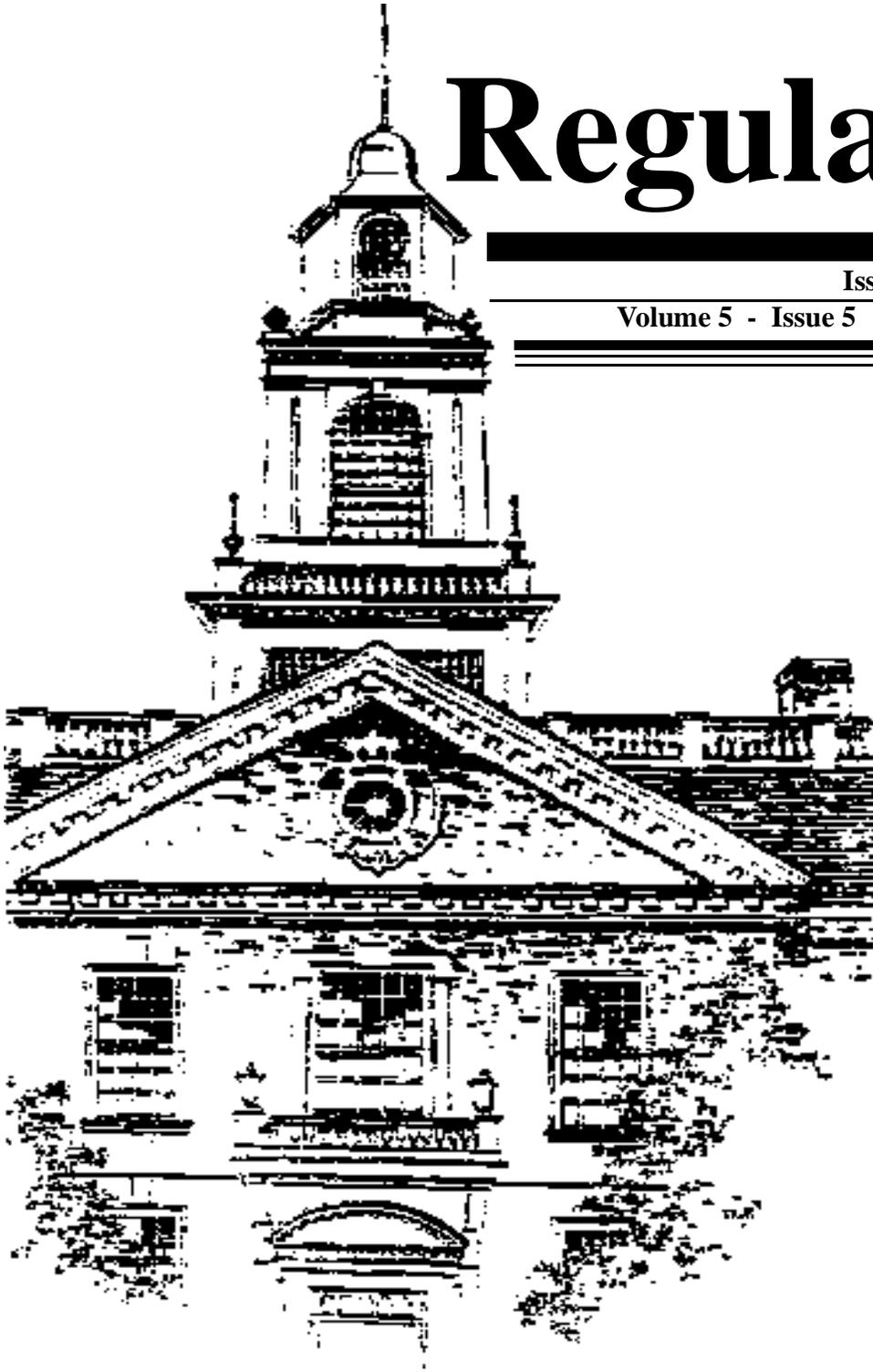


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# Delaware Register of Regulations



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Issue Date: November 1, 2001

Volume 5 - Issue 5

Pages 989 - 1175

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Pursuant to 29 Del.C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before October 15, 2001.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

The Delaware Register of Regulations is an official State publication established by authority of 69 Del. Laws, c. 107 and is published on the first of each month throughout the year.

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

The Register will also publish some or all of the following information:

- Governor's Executive Orders
- Governor's Appointments
- Attorney General's Opinions in full text
- Agency Hearing and Meeting Notices
- Other documents considered to be in the public interest.

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### CITATION TO THE DELAWARE REGISTER

The Delaware Register of Regulations is cited by volume, issue, page number and date. An example would be:

**4 DE Reg. 769 - 775 (11/1/00)**

Refers to Volume 4, pages 769 - 775 of the Delaware Register issued on November 1, 2000.

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### SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the Delaware Register of Regulations is \$120.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-744-4114 or 1-800-282-8545 in Delaware.

## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

Delaware citizens and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt, within the time allowed, of all written materials, upon all the testimonial and written

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

Any person aggrieved by and claiming the unlawfulness of any regulation may bring an action in the Court for declaratory relief.

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken.

When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

Except as provided in the preceding section,

no judicial review of a regulation is available unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the Register of Regulations.

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## CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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JANUARY 1	DECEMBER 15	4:30 P.M.
FEBRUARY 1	JANUARY 15	4:30 P.M.
MARCH 1	FEBRUARY 15	4:30 P.M.
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**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF VETERINARY MEDICINE**

24 DE Admin. Code 3300  
Statutory Authority: 24 Delaware Code,  
Section 3306(a)(1) (24 **Del.C.** 3306(a)(1))

**\* NOTE: THE TIME PUBLISHED FOR THE PUBLIC HEARING WAS INCORRECT IN THE OCTOBER ISSUE. THE CORRECT TIME OF 1:00 P.M. IS REPRODUCED HERE. FOR A COMPLETE SET OF THE PROPOSED CHANGES PLEASE SEE THE OCTOBER ISSUE OF THE REGISTER, PAGE 709.**

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Section 3306 (a)(1), the Delaware State Board of Veterinary Medicine proposes to revise its rules and regulations. The proposed changes would be comprehensive revision of the current rules and regulations. The proposed revisions seek to redefine the role of support personnel, unprofessional conduct by a veterinarian, standards for veterinary premises and equipment, privileged communications between a veterinarian and a client, and requirements for continuing education. The proposed changes also affect other aspects of licensure including renewal and reinstatement of licenses. The proposed regulations serve to implement or clarify specific sections of 24 **Del.C.** Chapter 33.

A public hearing will be held on the proposed Rules and Regulations on **Tuesday, November 13, 2001 at 1:00 p.m.** in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Susan Miccio at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Susan Miccio at the above address or by calling (302) 744-4506.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

**DEPARTMENT OF EDUCATION**

Title 14, DE Admin. Code  
Statutory Authority: 14 Delaware Code,  
Section 122(d) (14 **Del.C.** §122(d))

**\* NOTE: THE FINAL ORDER PUBLISHED IN THE OCTOBER REGISTER DID NOT INCLUDE REGULATION 319 AS BEING REPEALED. THE CORRECTED ORDER IS PUBLISHED BELOW WITH THE REGULATION BEING REPEALED.**

**Repeal of Certification Regulations 303, 315, 316, 317, 318, 319, 359, 366, 367, 369**

**Order Repealing Rules and Regulations**

**I. Summary of the Evidence and Information Submitted**

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to repeal regulations 303, 315, 316, 317, 318, 319, 359, 366, 367, and 369 from the *Regulations of the Department of Education*. All regulations listed concern the requirements for certification of educational personnel. The Professional Standards Board voted, on the recommendation of its Licensure and Certification Criteria Standing Committee, to eliminate certification requirements for non-instructional positions and for individuals who are duly certified or licensed by other Delaware agencies.

Notice of the proposed repeal of regulations was published in the News Journal and the Delaware State News on July 19, 2001, in the form hereto attached as Exhibit A. The notice invited written comments. Correspondence was received from the President of the Delaware Speech and Hearing Association indicating no objection to the repeal of regulations 359 and 369.

**II. Findings of Facts**

The Professional Standards Board and the State Board of Education find that it is appropriate to repeal these regulations because elimination of certification requirements for non-instructional positions will provide local boards of education more flexibility in hiring the individuals best suited for the positions and will alleviate the need for the Department of Education to review and process applications for certification for non-instructional positions. This will permit the Department to focus its energies on and allocate its resources to the licensure and certification of instructional personnel in schools. Elimination of certification requirements for individuals who are duly certified or licensed by other Delaware agencies will eliminate redundancy and possible conflict between certification or

licensure requirements among agencies.

### III. Decision to Repeal the Regulations

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude the identified regulations should be repealed. Therefore, pursuant to 14 Del. C. Sections 1203 and 1205(b), the regulations attached hereto as Exhibit "B" are hereby repealed.

### IV. Text and Citation

The text of the regulations 303, 315, 316, 317, 318, 319, 359, 366, 367, and 369, attached hereto as Exhibit "B" are repealed, and said regulations shall be deleted from the Regulations of the Department of Education.

### V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

#### Approved by the Professional Standards Board the 13<sup>th</sup> Day of September, 2001:

Charles Michels, Chair,	Mary Ellen Kotz, Vice Chair
Patricia Clements	Barbara Grogg Ross
Michèle Hazeur-Porter	Sherie Hudson
Tony Marchio	Mary Mirabeau
John Pallace	Joanne Reihm
Harold Roberts	Karen Schilling
Teresa Schooley	Carol Vukelich
Jacquelyn Wilson	

#### For Implementation by the Department of Education:

Valerie A Woodruff, Secretary of Education

#### It Is So Ordered this 20<sup>th</sup> Day of September, 2001.

Dr. Joseph A. Pika, President  
 Jean W. Allen, Vice President  
 Robert Gilsdorf  
 Mary B. Graham, Esquire  
 Valerie Pepper  
 Dennis J. Savage  
 Dr. Claibourne D. Smith

#### ~~319 Certification Supervisor Of School Food Service Programs~~

Effective July 1, 1993

~~1.0 The following shall be required for the Standard License for all full-time supervisors of a school food service~~

~~program:~~

#### ~~1.1 Degree required~~

~~1.1.1 Bachelor's degree from a regionally accredited college and,~~

#### ~~1.2 Experience~~

~~1.2.1 Two years of professional experience or teaching experience in the areas of food, nutrition, or institutional management or,~~

~~1.2.2 Successful completion of a Dietetic Internship as approved by the American Dietetic Association or,~~

~~1.2.3 Two years of experience in the supervision of quantity food production and service, or related business experience in the area of food, nutrition or institutional management or,~~

~~1.2.4 Two years of experience as a manager of a school food service unit or as the assistant manager, if the experience as the assistant occurs after the employee has been working in the school food service unit for at least two years prior to being assigned as Assistant Manager and,~~

#### ~~1.3 Specialized Professional Preparation~~

~~1.3.1 Completion of the requirements for the Bachelor's degree as stated above to include a major that is at least 30 semester hours, and in one of the following area~~

~~1.3.1.1 Business~~

~~1.3.1.2 Nutrition~~

~~1.3.1.3 Education~~

~~1.3.1.4 Institutional Management~~

~~1.3.1.5 Child Development~~

~~1.3.1.6 Quantity Food Preparation or,~~

~~1.3.2 Completion of the requirements of any Bachelor's degree and 30 semester hours in one of the areas listed above, whether or not the coursework is part of the degree program.~~

~~2.0 The following shall be required for the Limited Standard License~~

~~2.1 The Limited Standard License may be issued for a period of three years, at the request of a Delaware public school district, to a person employed as a School Food Service Supervisor to allow for the completion of the requirements for the Standard License in 1.0.~~

~~2.2 May be issued to a public school district employee who has met the requirements of 1.1 and 1.2 and,~~

~~2.3 Meets the requirements for Limited Standard as stated in the General Regulations in regard to 1.3.1. or 1.3.2.~~

~~3.0 Licenses that may be issued for this position include Standard and Limited Standard.~~

**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES****DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 505 (31 Del.C. §505)

**\* NOTE: THE INCORRECT TEXT FOR REGULATION DSSM 7004.3 WAS PUBLISHED IN THE OCTOBER REGISTER AT PAGE 929. THE CORRECT TEXT OF THE REGULATION IS PUBLISHED BELOW.**

**ORDER****Nature Of The Proceedings:**

The Delaware Department of Health and Social Services ("Department") / Division of Social Services / Food Stamp Program initiated proceedings to amend policies to implement policy changes to the following section of the Division of Social Services Manual: Section 7004.3. This change sets criteria for determining when a claim of \$125 or less is not established. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the August, 2001 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 31, 2001 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No written or verbal comments were received relating to this proposed rule

**Findings Of Fact:**

The Department finds that the proposed changes as set forth in the August, 2001 Register of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed regulations related to the Food Stamp Program Collection and Management of Food Stamp Claims are adopted and shall be final effective October 10, 2001.

September 14, 2001

Vincent P. Meconi, Secretary, DHSS

**REVISION****7004.3 Collection and Management of Food Stamp Claims**

We shall collect any overissuances of food stamps issued to a household by:

- a) reducing the allotment of the household;
  - b) withholding amounts from unemployment compensation from a member of the household;
  - c) recovering from Federal pay or a Federal income tax refund;
  - d) any other means;
- unless ARMS determines that all of the means listed above are not cost effective.

**Cost effective determination:**

DSS/ARMS can opt to not establish any claim if the claim referral is \$125 or less; unless the household is currently participating or the claim has already been established or discovered in a Quality Control review.

We will not establish any claim if the claim referral is \$125 or less unless:

- 1) the household is currently participating.
- 2) the claim has already been established.
- 3) there is already an existing Food Stamp claim.
- 4) there are other program(s) claims.
- 5) the claim referral is for multiple programs, or
- 6) the claim was discovered in a Quality Control

review.

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**Symbol Key**

Roman type indicates the text existing prior to the emergency regulation being promulgated. Italic type indicates new text. Language which is stricken through indicates text being deleted.

**Emergency Regulations**

Under 29 **Del.C.** §10119, if an agency determines that an imminent peril to the public health, safety or welfare requires the adoption, amendment or repeal of a regulation with less than the notice required by 29 **Del.C.** §10115, then the following rules shall apply: (1) The agency may proceed to act without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable; (2) The order adopting, amending or repealing a regulation shall state in writing the reasons for the agency's determination that such emergency action is necessary; (3) the order effecting such action may be effective for a period of not longer than 120 days and may be renewed once for a period not exceeding 60 days; (4) When such an order is issued without any of the public procedures otherwise required or authorized by Chapter 101 of Title 29, the agency shall state as part of the order that it will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof; and (5) The agency shall submit a copy of the emergency order to the Registrar for publication in the next issue of the Register of Regulations.

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**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES**
**DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 505 (31 **Del.C.** §505)

**Nature Of The Proceedings**

The Delaware Department of Health and Social Services ("Department") has determined that a threat to the public welfare exists if revision of the regulation contained in DSSM Section 9060 is not implemented without prior notice or hearing. Failure to implement will result in a delay in immediately implementing the maximum Standard Utility Allowance (SUA).

**Nature Of Proposed Revisions**

(revisions underlined):

**Findings Of Fact**

The Department finds that these changes should be made in the best interest of the general public of the State of Delaware. The Department will receive, consider, and respond to petitions by any interested person for the reconsideration or revision thereof.

THEREFORE, IT IS ORDERED, that the proposed revision to the regulation be adopted on an emergency basis without prior notice or hearing, and shall become effective immediately.

Vincent P. Meconi, Secretary, DHSS  
10.15.2001

**REVISION****DSSM 9060 Income Deductions**

F. Shelter Costs - Monthly shelter costs in excess of 50% of the household's income after all other deductions in A, B, and C above have been allowed. The shelter deduction must not exceed the maximum excess shelter deduction limit. (Refer to the current October Cost-of-Living Adjustment Administrative Notice for the maximum excess shelter deduction.) This is applicable unless the household contains a member who is age sixty (60) or over, or disabled per DSSM 9013.1. Such households will receive an excess shelter deduction for the monthly costs that exceeds 50% of the household's monthly income after all other applicable deductions.

Shelter costs will include only the following:

1) Continuing charges for the shelter occupied by the household, including rent, mortgages, condo and association fees, or other continuing charges leading to the ownership of the shelter such as loan repayments for the purchase of a mobile home, including interest on such payments. A mortgage is defined as any loan that uses the house as collateral.

Households required to pay the "last month's rent" along with the first month's rent before they can move into the dwelling can claim both amounts in the month that the household is billed.

For example, a client rents an apartment in January and must pay January's and the next December's rent in January.

Both rental amounts can be used for January's food stamp budget. A rent deduction would not be allowed in December since it was paid in January.

Households required to pay a security deposit before they move into a dwelling cannot claim the deposit as a shelter cost.

For example, a client rents a home and must pay a \$450 security deposit and the first month's rent before she moves in. The security deposit will be refunded when she moves out if the home is in good condition. She cannot claim the deposit as a shelter cost for food stamp purposes.

2) Property taxes, State and local assessments and insurance on the structure itself, but not separate costs for insuring furniture or personal belongings. If separate insurance costs for furniture or personal belongings are not identified, use the total.

3) The costs of:

- fuel for heating or air conditioning costs for cooling;
- electricity or fuel used for purposes other than heating or cooling;
- water;
- sewerage;
- well installation and maintenance;
- septic tank system installation and maintenance;
- garbage and trash collection;
- all service fees for one telephone, including, but not limited to basic service fees, subscriber line charges, relay center surcharges, 911 fees, and taxes; and
- fees charged by the utility provider for initial installation of the utility.

One time deposits cannot be included.

4) ~~There are two standard utility allowances. The standard heating allowance will be available only to households which incur heating costs separately and apart from their rent or mortgage including residents of rental housing who are billed on a monthly basis by their landlords for actual usage as determined through individual metering. The standard heat allowance is available to households receiving indirect energy assistance payments.~~

~~A household living in a public housing unit or other rental housing unit which has central utility meters and charges the household only for excess utility costs is not permitted to use either standard allowance. Such households may claim the actual verified utility expenses, which it does pay separately. Households should be advised of this option at each (re) certification.~~

~~The two annualized utility allowances are offered available:~~

The limited utility basic allowance (LUA) is available to households that do not pay for heat or air

conditioning cooling, but incur costs that include electricity and fuel for purposes other than heating or cooling, water, sewerage, well and septic tank installation and maintenance, telephone, and garbage or trash collection. To get the LUA, the household must incur expenses for at least two utilities, like phone and electric, phone and water, gas cooking and non-heat or cooling electric, or water and trash collection. A household living in a public housing unit or other rental housing unit which has central utility meters and charges the household only for excess heating or cooling costs can receive the LUA provided the household has another utility like a phone or gas cooking.

The heating and cooling utility allowance (HCSUA) is available to households with heating or air conditioning cooling costs separate from their rent or mortgage. Other households eligible for the HCSUA include:

- Residents of private rental housing who are billed on a monthly basis by their landlords for actual usage as determined through individual usage or who are charged a flat rate;
- Households receiving energy payments under the Low Income Home Energy Assistance (LIHEA);
- Households receiving direct or indirect energy assistance payments, other than LIHEA, that is excluded as income and who continue to incur any out-of-pocket heating or cooling expenses during any month in the certification period.

Heating costs must be verified to use the HCSUA. For cooling costs, you must verify the utility, like electricity, that provides the air conditioning. Accept the household's statement that they pay for cooling unless it is questionable.

(Refer to the current October Cost-of-Living Adjustment Administrative Notice for the standard utility allowances.)

Households may choose between a standard or verified actual utility costs at initial certification, recertification, or when a household moves.

~~Permit households to switch between their actual utility costs and the appropriate utility standard at the time of recertification.—Qualifying households not opting to itemize actual utility costs will be assigned the appropriate standard utility allowance.~~

If the household is billed separately for only telephone, water, sewer, or garbage collection fees (any one or more of these), the household is not entitled to claim either standard utility allowance. ~~If one of these households is billed for a telephone, The standard telephone allowance will be used (for these households billed only for a telephone, and regardless of their actual cost). In addition, these households may claim the actual utility expenses (water, sewer, or garbage) for which they are billed separately from rent or mortgage payments.—~~ (Refer to the current October Cost-of-Living Adjustment Administrative Notice for the telephone

allowance.)

If a household is billed only for one utility, not heating/cooling or telephone, the household is allowed the actual cost for that utility.

#### Prorating the SUA

When households live with and share utility expenses with other individuals or households, whether they are participating in the Food Stamp Program or not, the agency will prorate the standard utility allowances based on the number of households sharing the utility costs.

The following are examples of prorating the SUA:

Two (2) households share a residence. They both contribute towards the utility costs. The food stamp household pays \$50 towards the costs each month. The food stamp household is entitled to one-half of the SUA.

A food stamp household shares an apartment and utilities with another individual. The food stamp household pays two-thirds of the utility costs. The household is entitled to one-half of the SUA.

Three (3) households share a residence and utility expenses. The food stamp household pays a different amount each month based on the amount of the costs. The food stamp household is entitled to a one-third proration of the SUA.

4) The shelter costs of the home if not occupied by the household because of employment or training away from home, illness or abandonment caused by a natural disaster or casualty loss. For costs of a home vacated by the household to be included in the household's shelter costs, the household must intend to return to the home; the current occupants of the home, if any must not be claiming the shelter costs for food stamp purposes; and the home must not be leased or rented during the absence of the household.

A household that has both an occupied home and an unoccupied home is only entitled to one standard utility allowance.

5) Charges for the repair of the home that was substantially damaged or destroyed due to a natural disaster such as a fire or flood. Shelter costs will not include charges for repair of the home that have been or will be reimbursed by private or public relief agencies, insurance companies, or from any other source. Repairs, other than those due to natural disasters, do not count as a deduction, even when tenants must pay for them or be evicted.

### DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,  
Section 505 (31 Del.C. §505)

#### Nature Of The Proceedings:

The Delaware Department of Health and Social Services ("Department") has determined that a threat to the public welfare exists if revision of the regulation contained in DSSM Section 20620.1 is not implemented without prior notice or hearing. Failure to implement will result in a delay in an increase in the amount of funds that can be protected monthly in a personal needs account for Medicaid clients residing in nursing facilities. An increase from \$42.00 to \$44.00 was approved and funded by the Delaware Legislature effective October 1, 2001.

#### Nature Of Proposed Revisions:

(revisions underlined):

#### Findings Of Fact:

The Department finds that these changes should be made in the best interest of the general public of the State of Delaware. The Department will receive, consider, and respond to petitions by any interested person for the reconsideration or revision thereof.

THEREFORE, IT IS ORDERED, that the proposed revision to the regulation be adopted on an emergency basis without prior notice or hearing, and shall become effective immediately.

Vincent P. Meconi, Secretary, DHSS  
10.15.2001

### REVISION

#### 20620.1 Personal Needs

~~\$42.00~~ \$44.00 per month of available income is to be protected for the recipients direct personal needs.

If the recipient receives a reduced VA Improved Pension (not to exceed \$90) the personal needs amount will be \$90 or the amount of personal needs allowance in the state plan, whichever is greater.

If the recipient regularly attends a rehab/educational program off the grounds of his nursing facility, including employment for the purpose of rehabilitation in a sheltered workshop off the grounds of the facility, \$50.00 per month (rather than ~~\$42~~ \$44) will be protected.

For nursing home residents who are participating in

substantial gainful activity (SGA) (20 CFR 416.971), the following amounts, not to exceed the Adult Foster Care rate will be deducted from gross earned income:

- Mandatory payroll deductions that are a condition of employment including, but not limited to:
  - Federal, State and Local Taxes
  - FICA
  - Union Dues
  - Insurance premiums
  - Pension contributions
  - Transportation costs as paid to & from work
  - Clothing and personal needs allowance of \$75/

month.

If earnings average more than \$700 a month in a calendar year, this is considered SGA and DSS can allow a personal needs allowance of up to the AFC rate. If earnings average less than \$300 a month in a calendar year, this is not ordinarily considered SGA and DSS can allow the ~~\$42~~ \$44 or \$50 personal needs allowance. If average earnings are between \$300 and \$700, DSS must consider other factors to determine whether or not the work constitutes SGA. Other factors include considering if the work is comparable to unimpaired people in the community performing similar jobs.

**Symbol Key**

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

**Proposed Regulations**

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation; The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

**DELAWARE STATE FIRE  
PREVENTION COMMISSION**

Statutory Authority: 16 Delaware Code,  
Section 6603 (16 **Del.C.** §6603)

**Notice Of Public Hearing**

The Delaware State Fire Prevention Commission will hold a hearing pursuant to 16 Del. C. §6603 and 29 Del. C. Ch. 101, to receive public comment regarding a proposed change to the State Fire Prevention Regulations. The Commission is proposing to add a Criminal History Records Check Policy, to the Ambulance Service Regulations as follows:

Add Section 3 - 1. Criminal History Records Check Policy

**Date, Time And Place Of Public Hearing**

**DATE:** Tuesday, November 20, 2001

**TIME:** 9:00 AM and 1:00 PM

**PLACE:**Commission Chamber  
Delaware State Fire School  
Delaware Fire Service Center  
1463 Chestnut Grove Road  
Dover, Delaware 19904

Persons may view the proposed addition to the Regulations between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, at the Delaware State Fire

Prevention Commission Office, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware, 19904.

Persons may present their views in writing by mailing their views to the Commission at the above address prior to the hearing or by offering testimony at the public hearing. If the number of persons desiring to testify at the public hearing is large, the amount of time allotted to each speaker will be limited.

**Criminal History Records Check Policy****I. Authorized Governmental Designee for the Commission**

A. The Delaware State Fire Prevention Commission authorizes the Director of the Delaware State Fire School to be its governmental designee to acquire and review State and Federal criminal history records submitted by the State Bureau of Identification for an applicant applying to become an Ambulance Attendant or a Delaware Emergency Medical Technician and to interview the applicant, if necessary.

**II. Evaluation Procedure for Background Checks**

A. The Director of the Fire School shall evaluate the criminal history records checks using the criteria established in 16 Del. C. § 6712(b). All criminal history records will be forwarded by the State Bureau of Identification to the Director of the Delaware State Fire School.

B. Should the Director of the Delaware State Fire School as a result of the criminal history records check find cause to recommend to the Commission that it deny the application of the person seeking certification as an Ambulance Attendant or as an Emergency Medical

Technician, the Director shall notify the Commission of this decision.

C. The Commission shall advise the applicant that it intends to deny the application and state the reason therefor. The Commission will also advise the applicant of the right to review all information reviewed by the Director and the right to appeal the Commission's decision by requesting a hearing before the Commission.

### **III. Appeal Process for Denial of Certification or Decertification because of Criminal Conviction**

A. Any Delaware EMT-B applicant or certificate holder notified by the Commission that the Commission intends to deny the application or decertify the certificate holder because of criminal history records check information may appeal the denial to the State Fire Prevention Commission. The process is:

1. Within 10 days after the postmark on the notification of the intent to deny certification or decertify a certificate holder, the applicant shall submit a written request for a hearing to the State Fire Prevention Commission stating the reason(s) supporting the appeal.

2. Notice of the hearing shall be given at least 20 days before the day of the hearing and comply with the provisions of 29 Del. C. § 10122.

3. The grievance hearing before the State Fire Prevention Commission will be conducted in accordance with the Delaware Administrative Procedures Act 29 Del. C. ch 101.

4. The hearing will be closed to the public unless the applicant requests an open hearing. After the hearing, the Commission will inform the applicant of its decision.

### **IV. Requirements for Certification**

A. Persons seeking certification as an Ambulance Attendant or as an Emergency Medical Technician must be eighteen (18) years of age at the time of application.

1. Individuals entering an EMT-B course must be eighteen (18) years of age at the start of the course.

B. An individual applying for certification must meet the requirement of Part X, Section V, Eligibility of Certification of the State Fire Prevention Commission Addendum to the Ambulance Service Regulations, BLS Ambulance Provider/First Responder.

C. Persons seeking certification must meet the criminal history record check as mandated in 16 Del. C. § 6712(b), effective July 12, 2001 and follow the procedures outlined in this policy.

### **V. Administrative Policy Pertaining to Background Checks**

A. All training announcements for EMT-B courses will include the statement "Criminal History Records checks will be required on or before the first night of class".

B. All Chiefs of Departments, Presidents or Ambulance Captains of volunteer rescue or ambulance squads or Operating Officers of private corporations which have students pre-registered for the class will be sent a notice to inform the student that a criminal history records check will be done on the first night of class and fingerprinting will be required.

C. Any student not pre-registered for the class will not be accepted as a walk-in.

D. All EMT-B students will sign a release provided by the State Bureau of Identification authorizing the criminal history records check. Any student failing to sign the designated form will not be allowed to participate in the course.

E. All students of new courses who are members of a volunteer fire, rescue or ambulance organization will sign the authorization of payment allowing the State Fire Prevention Commission to reimburse the State Bureau of Identification on their behalf for the cost of the criminal history records check.

F. Students who are members of a private ambulance service are required to pay the course tuition prior to the first night of class. The tuition is non-refundable unless the student drops out prior to the first night of class. The tuition includes the cost of the criminal history records check which will be paid to the State Bureau of Identification on the student's behalf by the State Fire School.

G. Any volunteer fire, rescue or ambulance company which registering a student who is denied certification pursuant to the provision of 16 Del. C. § 6712(b), shall be responsible to reimburse the Commission for the cost of the criminal history records check.

H. Any student accepted into the course who does not complete same will be required to reimburse the commission the cost of the criminal history records check and course textbook.

### **VI. Condition and Duration of Certification/Decertification**

A. The State Fire Prevention Commission shall issue initial certification as an Ambulance Attendant and Delaware Emergency Medical Technician – Basic as prescribed in Part X, Section VI, Certification, of the State Fire Prevention Commission Regulations provided that:

1. The applicant passes the mandated criminal history record check.

2. Obtain all necessary immunizations.

3. Meet the course attendance requirement policy as prescribed by the Delaware State Fire School, if applicable.

4. Pass the National Registry of Emergency Medical Technician's Examination.

#### **B. De-certification**

1. The State Fire Prevention Commission shall

decertify an Ambulance Attendant or Delaware EMT-B if:

- a. The individual does not meet the recertification requirements established in the State Fire Prevention Commission Regulation, Part X, section IX. Or
- b. The individual is convicted of an offense as specified in 16 Del. C. § 6712(b) while currently certified and the procedures in section VII of this policy are followed.

#### **VII. Procedure for De-certification for Criminal Offense**

A. The State Fire Prevention Commission may decertify any currently certified Ambulance Attendant or EMT when it has reason to believe that the person has been convicted of a crime within the scope of §6712 of Title 16.

B. Upon receiving a written notice that an Ambulance Attendant or EMT was convicted of a crime within the provisions of §6712, Title 16 the Commission shall:

1. Immediately suspend the individual's certification pending an investigation into the allegations.
2. Notify the individual in writing of the allegations and suspensions and allow the certificate holder an informal opportunity to contest the allegations of a conviction.
3. Require the individual to obtain a current background check at their expense.
  - a. Background check information will be reviewed by the Director of the State Fire School, who will make determination if cause for de-certification exists. The Director will notify the Commission of the findings.
4. Based on the information provided by the Director the Commission will either inform the certificate holder of the intent to de-certify the individual or lift the individual's suspension.

C. The individuals may appeal the de-certification using the procedure under section III, Appeal Process specified in this Policy.

#### **VIII. Reciprocity Applicants for Certification as Ambulance Attendant or EMT**

A. Applicants applying for reciprocity for Ambulance Attendant and Delaware EMT-B from another state shall meet the requirements of Part X, Section XII of the Delaware State Fire Prevention Commission Regulations

B. Applicants applying for reciprocity from another state must comply with the background check requirements as specified in 16 Del. C. § 6712.

#### **IX. Reciprocity Applicants – Criminal History Records Check Procedures**

A. Applicants seeking reciprocity to become Delaware Ambulance Attendant or EMT's must submit to a criminal history records check prior to applying for reciprocity certification.

1. Applicants will go to a Delaware State Police Troop and apply for a State and Federal criminal history

records check. All reciprocity applicants will pay at the time of request. The criminal history records check must be done within 30 days of the reciprocity request.

2. Applicant will authorize the release of the criminal history records check information directly to the Director of the Delaware State Fire School.

3. Applicant will notify the Delaware State Fire School on the prescribed form they are seeking reciprocity and have applied for a criminal history records check.

4. Upon receipt by the Delaware State Fire School and evaluation of the criminal history records check the individual will be notified by the Fire School as to how to proceed with required testing and certification procedures.

5. Should the applicant be denied reciprocity because of criminal history records check information they will be advised of the appeal process in section III of this policy.

#### **X. Funding of Reciprocity Background Checks**

A. All applicants will pay for the criminal history records check at the time of their request.

1. It is the responsibility of the private providers, private individuals or City of Wilmington to pay all costs – they are not eligible for reimbursement.

2. Upon successful completion of the reciprocity process the State Fire Prevention Commission will reimburse the individual or the individual's volunteer fire, rescue or ambulance organization for the cost of the criminal history records check.

#### **XI. Reciprocity for University of Delaware Students**

A. The Delaware State Fire Prevention Commission will waive the criminal history records check requirements for all University of Delaware Students applying for certification as an Ambulance Attendant or as an Emergency Medical Technician.

1. The University Police Department will provide the Director of the Delaware State Fire School with a written document listing all eligible students and a statement that they have passed an internal background check at least equal to the requirement of 16 Del. C. § 6712.

#### **XII. Confidentiality of Background Check Information**

A. Information obtained pursuant to the background check is confidential and except as provided in Section C below, shall not be released from the Fire School under any circumstances to anyone.

B. All background check information that is reviewed by the Director of the Delaware State Fire School shall be retained in a locked file cabinet in the custody of the Director.

C. When a denial for certification is made, the information will be turned over to the State Fire Prevention Commission where it will be secured for at least 60 days or

until the appeal process is completed.

1. If an appeal is not filed, at the end of 60 days, the information is to be returned to the Director.

D. Per 16 Del. C. § 6712 the individual may meet with the Director and after providing proof of identification including a photo identification, review their information. Copies will not be provided to anyone.

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**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF NURSING**

24 DE Admin. Code 1900

Statutory Authority: 24 Delaware Code,  
Section 1906(19) (24 Del.C. §1906(19))

The Delaware Joint Practice Committee in accordance with 24 Del. Code, Subsection 1906(19) has proposed to revise the Rules and Regulations governing Independent Practice/Prescriptive Authority for Advanced Practice Nurses (APN).

The proposed changes detail the complaint process related to APN's Independent Practice/Prescriptive Authority and define the Joint Practice Committee's process of APN members, officers, and meetings.

A public hearing will be held on Tuesday, December 18, 2001 at 5:30 p.m. in the second floor conference room C-216 at Delaware Technical and Community College, Stanton Campus, 400 Christiana-Stanton Road, Newark, Delaware.

Anyone desiring a copy of the proposed revised section of the Rules and Regulations may obtain a copy from the Delaware Board of Nursing, 861 Silver Lake Blvd., Cannon Building, Suite 203, Dover, DE 19904, (302) 744-4516. Persons desiring to submit written comments on the revised rules and regulations may forward these comments to the above address. The final date to receive written comments will December 18, 2001.

### **8.0 Rules and Regulations for Advanced Practice Nurse Prescriptive Authority/Independent Practice for the State of Delaware**

#### **8.1 Authority**

These rules and regulations are adopted by the Delaware Board of Nursing under the authority of the Delaware Nurse Practice Act, 24 Del.C. §§1902(d), 1906(1), 1906(7).

#### **8.2 Purpose**

8.2.1 The general purpose of these rules and regulations is to assist in protecting and safeguarding the

public by regulating the practice of the Advanced Practice Nurse.

#### **8.3 Scope**

8.3.1 These rules and regulations govern the educational and experience requirements and standards of practice for the Advanced Practice Nurse. Prescribing medications and treatments independently is pursuant to the Rules and Regulations promulgated by the Joint Practice Committee as defined in 24 Del.C. §1906(20). The Advanced Practice Nurse is responsible and accountable for her or his practice. Nothing herein is deemed to limit the scope of practice or prohibit a Registered Nurse from engaging in those activities that constitute the practice of professional nursing and/or professional nursing in a specialty area.

#### **8.4 Definitions**

**“Advanced Practice Nurse”** as defined in 24 Del.C. §1902(d)(1). Such a nurse will be given the title Advanced Practice Nurse by state licensure, and may use the title Advanced Practice Nurse within his/her specific specialty area.

**“Certified Nurse Midwife (C.N.M.)”** A Registered Nurse who is a provider for normal maternity, newborn and well-woman gynecological care. The CNM designation is received after completing an accredited post-basic nursing program in midwifery at schools of medicine, nursing or public health, and passing a certification examination administered by the ACNM Certification Council, Inc. or other nationally recognized, Board of Nursing approved certifying organization.

**“Certified Registered Nurse Anesthetist (C.R.N.A.)”** A Registered Nurse who has graduated from a nurse anesthesia educational program accredited by the American Association of Nurse Anesthetists' Council on Accreditation of Nurse Anesthesia Educational programs, and who is certified by the American Association of Nurse Anesthetists' Council on Certification of Nurse Anesthetists or other nationally recognized, Board of Nursing approved certifying organization.

**“Clinical Nurse Specialist (C.N.S.)”** A Registered Nurse with advanced nursing educational preparation who functions in primary, secondary, and tertiary settings with individuals, families, groups, or communities. The CNS designation is received after graduation from a Master's degree program in a clinical nurse specialty or post Master's certificate, such as gerontology, maternal-child, pediatrics, psych/mental health, etc. The CNS must have national certification in the area of specialization at the advanced level if such a certification exists or as specified in 8.9.4.1 of these Rules and Regulations. The certifying agency must meet the established criteria approved by the Delaware Board of Nursing.

**“Nurse Practitioner (N.P.)”** A Registered Nurse with advanced nursing educational preparation who is a

provider of primary healthcare in a variety of settings with a focus on a specific area of practice. The NP designation is received after graduation from a Master's program or from an accredited post-basic NP certificate program of at least one academic year in length in a nurse practitioner specialty such as acute care, adult, family, geriatric, pediatric, or women's health, etc. The NP must have national certification in the area of specialization at the advanced level by a certifying agency which meets the established criteria approved by the Delaware Board of Nursing.

**"Audit"** The verification of existence of a collaborative agreement for a minimum of 10% of the total number of licenses issued during a specified time period.

**"Board"** The Delaware Board of Nursing

**"Clinical Nursing Specialty"** a delimited focus of advanced nursing practice. Specialty areas can be identified in terms of population, setting, disease/pathology, type of care or type of problem. Nursing administration does not qualify as a clinical nursing specialty.

**See 3 DE Reg. 1373 (4/1/00)**

**"Collaborative Agreement"** Written verification of health care facility approved clinical privileges; or health care facility approved job description; or a written document that outlines the process for consultation and referral between an Advanced Practice Nurse and a licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system.

**"Guidelines/ Protocols"** Suggested pathways to be followed by an Advanced Practice Nurse for managing a particular medical problem. These guidelines/protocols may be developed collaboratively by an Advanced Practice Nurse and a licensed physician, dentist or a podiatrist, or licensed Delaware health care delivery system.

**"National Certification"** That credential earned by a nurse who has met requirements of a Board approved certifying agency.

The agencies so approved include but are not limited to:

American Academy of Nurse Practitioners  
American Nurses Credentialing Center  
American Association of Nurse  
Anesthetists Council on Certification of Nurse Anesthetists  
American Association of Nurse  
Anesthetists Council on Recertification of Nurse  
Anesthetists

National Certification Corporation for the  
Obstetric, Gynecologic and Neonatal Nursing Specialties  
National Certification Board of Pediatric  
Nurse Practitioners and Nurses.

ACNM Certification Council, Inc.

**"Post Basic Program"**

A combined didactic and clinical/preceptored program of at least one academic year of full time study in the area of advanced nursing practice with a minimum of

400 clinical/preceptored hours.

The program must be one offered and administered by an approved health agency and/or institution of higher learning,

Post basic means a program taken after licensure is achieved.

**"Scope of Specialized Practice"** That area of practice in which an Advanced Practice Nurse has a Master's degree or a post-basic program certificate in a clinical nursing specialty with national certification.

**"Supervision"** Direction given by a licensed physician or Advanced Practice Nurse to an Advanced Practice Nurse practicing pursuant to a temporary permit. The supervising physician or Advanced Practice Nurse must be periodically available at the site where care is provided, or available for immediate guidance.

#### 8.5 Grandfathering Period

8.5.1 Any person holding a certificate of state licensure as an Advanced Practice Nurse that is valid on July 8, 1994 shall be eligible for renewal of such licensure under the conditions and standards prescribed herein for renewal of licensure.

#### 8.6 Standards for the Advanced Practice Nurse

8.6.1 Advanced Practice Nurses view clients and their health concerns from an integrated multi-system perspective.

8.6.2 Standards provide the practitioner with a framework within which to operate and with the means to evaluate his/her practice. In meeting the standards of practice of nursing in the advanced role, each practitioner, including but not limited to those listed in 8.6.2 of these Rules and Regulations:

8.6.2.1 Performs comprehensive assessments using appropriate physical and psychosocial parameters;

8.6.2.2 Develops comprehensive nursing care plans based on current theories and advanced clinical knowledge and expertise;

8.6.2.3 Initiates and applies clinical treatments based on expert knowledge and technical competency to client populations with problems ranging from health promotion to complex illness and for whom the Advanced Practice Nurse assumes primary care responsibilities. These treatments include, but are not limited to psychotherapy, administration of anesthesia, and vaginal deliveries;

8.6.2.4 Functions under established guidelines/protocols and/or accepted standards of care;

8.6.2.5 Uses the results of scientifically sound empirical research as a basis for nursing practice decisions;

8.6.2.6 Uses appropriate teaching/learning strategies to diagnose learning impediments;

8.6.2.7 Evaluates the quality of individual client care in accordance with quality assurance and other standards;

8.6.2.8 Reviews and revises guidelines/

protocols, as necessary;

8.6.2.9 Maintains an accurate written account of the progress of clients for whom primary care responsibilities are assumed;

8.6.2.10 Collaborates with members of a multi-disciplinary team toward the accomplishment of mutually established goals;

8.6.2.11 Pursues strategies to enhance access to and use of adequate health care services;

8.6.2.12 Maintains optimal advanced practice based on a continual process of review and evaluation of scientific theory, research findings and current practice;

8.6.2.13 Performs consultative services for clients referred by other members of the multi-disciplinary team; and

8.6.2.14 Establishes a collaborative agreement with a licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system to facilitate consultation and/or referral as appropriate in the delivery of health care to clients.

8.6.3 In addition to these standards, each nurse certified in an area of specialization and recognized by the Board to practice as an Advanced Practice Nurse is responsible for practice at the level and scope defined for that specialty certification by the agency which certified the nurse.

8.7 Generic Functions of the Advanced Practice Nurse Within the Specialized Scope of Practice include but are not limited to:

8.7.1 Eliciting detailed health history(s)

8.7.2 Defining nursing problem(s)

8.7.3 Performing physical examination(s)

8.7.4 Collecting and performing laboratory tests

8.7.5 Interpreting laboratory data

8.7.6 Initiating requests for essential laboratory procedures

8.7.7 Initiating requests for essential x-rays

8.7.8 Screening patients to identify abnormal problems

8.7.9 Initiating referrals to appropriate resources and services as necessary

8.7.10 Initiating or modifying treatment and medications within established guidelines

8.7.11 Assessing and reporting changes in the health of individuals, families and communities

8.7.12 Providing health education through teaching and counseling

8.7.13 Planning and/or instituting health care programs in the community with other health care professionals and the public

8.7.14 Delegating tasks appropriately

8.7.15 Prescribing medications and treatments independently pursuant to Rules and Regulations promulgated by the Joint Practice Committee as defined in

24 Del.C. §1906(20).

8.8 Criteria for Approval of Certification Agencies

8.8.1 A national certifying body which meets the following criteria shall be recognized by the Board to satisfy 24 Del.C. §1902(d)(1).

8.8.2 The national certifying body:

8.8.2.1 Is national in the scope of its credentialing.

8.8.2.2 Has no requirement for an applicant to be a member of any organization.

8.8.2.3 Has educational requirements which are consistent with the requirements of these rules.

8.8.2.4 Has an application process and credential review which includes documentation that the applicant's education is in the advanced nursing practice category being certified, and that the applicant's clinical practice is in the certification category.

8.8.2.5 Uses an examination as a basis for certification in the advanced nursing practice category which meets the following criteria:

8.8.2.5.1 The examination is based upon job analysis studies conducted using standard methodologies acceptable to the testing community;

8.8.2.5.2 The examination represents the knowledge, skills and abilities essential for the delivery of safe and effective advanced nursing care to the clients;

8.8.2.5.3 The examination content and its distribution are specified in a test plan (blueprint), based on the job analysis study, that is available to examinees;

8.8.2.5.4 Examination items are reviewed for content validity, cultural sensitivity and correct scoring using an established mechanism, both before use and periodically;

8.8.2.5.5 Examinations are evaluated for psychometric performance;

8.8.2.5.6 The passing standard is established using acceptable psychometric methods, and is reevaluated periodically; and

8.8.2.5.7 Examination security is maintained through established procedures

8.8.2.6 Issues certification based upon passing the examination and meeting all other certification requirements.

8.8.2.7 Provides for periodic recertification which includes review of qualifications and continued competency.

8.8.2.8 Has mechanisms in place for communication to Boards of Nursing for timely verification of an individual's certification status, changes in certification status, and changes in the certification program, including qualifications, test plan and scope of practice.

8.8.2.9 Has an evaluation process to provide quality assurance in its certification program.

8.9 Application for Licensure to Practice as an

**Advanced Practice Nurse**

8.9.1 Application for licensure as a Registered Nurse shall be made on forms supplied by the Board.

8.9.2 In addition, an application for licensure to practice as an Advanced Practice Nurse shall be made on forms supplied by the Board.

8.9.2.1 The APN applicant shall be required to furnish the name(s) of the licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system with whom a current collaborative agreement exists.

8.9.2.2 Notification of changes in the name of the licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system shall be forwarded to the Board office.

8.9.3 Each application shall be returned to the Board office together with appropriate documentation and non-refundable fees.

8.9.4 A Registered Nurse meeting the practice requirement as listed in 8.11 and all other requirements set forth in these Rules and Regulations may be issued a license as an Advanced Practice Nurse in the specific area of specialization in which the nurse has been nationally certified at the advanced level and/or has earned a Master's degree in a clinical nursing specialty.

8.9.4.1 Clinical nurse specialists, whose subspecialty area can be categorized under a broad scope of nursing practice for which a Board-approved national certification examination exists, are required to pass this certification examination to qualify for permanent licensure as an Advanced Practice Nurse. This would include, but not be limited to medical-surgical and psychiatric-mental health nursing. If a more specific post-graduate level certification examination that has Board of Nursing approval is available within the clinical nursing specialist's subspecialty area at the time of licensure application, the applicant may substitute this examination for the broad-based clinical nursing specialist certification examination.

8.9.4.2 Faculty members teaching in nursing education programs are not required to be licensed as Advanced Practice Nurses. Those faculty members teaching in graduate level clinical courses may apply for licensure as Advanced Practice Nurses and utilize graduate level clinical teaching hours to fulfill the practice requirement as stated in 8.11.2.1.

8.9.5 Renewal of licensure shall be on a date consistent with the current Registered Nurse renewal period. A renewal fee shall be paid.

8.9.6 The Board may refuse to issue, revoke, suspend or refuse to renew the license as an Advanced Practice Nurse or otherwise discipline an applicant or a practitioner who fails to meet the requirements for licensure as an Advanced Practice Nurse or as a registered nurse, or who commits any disciplinary offense under the Nurse Practice Act, 24 Del.C. Ch. 19, or the Rules and Regulations

promulgated pursuant thereto. All decisions regarding independent practice and/or independent prescriptive authority are made by the Joint Practice Committee as provided in 24 Del.C. §1906(20) - (22).

**8.10 Temporary Permit for Advanced Practice Nurse Licensure**

8.10.1 A temporary permit to practice, pending Board approval for permanent licensure, may be issued provided that:

8.10.1.1 The individual applying has also applied for licensure to practice as a Registered Nurse in Delaware, or

8.10.1.2 The individual applying holds a current license in Delaware, and

8.10.1.3 The individual submits proof of graduation from a nationally accredited or Board approved Master's or certificate advanced practice nursing program, and has passed the certification examination, or

8.10.1.4 The individual is a graduate of a Master's program in a clinical nursing specialty for which there is no certifying examination, and can show evidence of at least 1000 hours of clinical nursing practice within the past 24 months.

8.10.1.5 Application(s) and fee(s) are on file in the Board office.

8.10.2 A temporary permit to practice, under supervision only, may be issued at the discretion of the Executive Director provided that:

8.10.2.1 The individual meets the requirements in 8.10.1.1 or 8.10.1.2, and 8.10.1.5 and;

8.10.2.2 The individual submits proof of graduation from a nationally accredited or Board approved Master's or certificate advanced practice nurse program, and;

8.10.2.3 The individual submits proof of admission into the approved certifying agency's examination or is seeking a temporary permit to practice under supervision to accrue the practice hours required to sit for the certifying examination or has accrued the required practice hours and is scheduled to take the first advanced certifying examination upon eligibility or is accruing the practice hours referred to in 8.10.2.4; or,

8.10.2.4 The individual meets 8.10.2.1 and 8.10.2.2 hereinabove and is awaiting review by the certifying agency for eligibility to sit for the certifying examination.

8.10.3 If the certifying examination has been passed, the appropriate form must accompany the application.

8.10.4 A temporary permit may be issued:

8.10.4.1 For up to two years in three month periods.

8.10.4.2 At the discretion of the Executive Director.

8.10.5 A temporary permit will be withdrawn:

8.10.5.1 Upon failure to pass the first certifying examination

8.10.5.1.1 The applicant may petition the Board of Nursing to extend a temporary permit under supervision until results of the next available certification exam are available by furnishing the following information:

8.10.5.1.1.1 current employer reference,

8.10.5.1.1.2 supervision available,

8.10.5.1.1.3 job description,

8.10.5.1.1.4 letter outlining any extenuating circumstances,

8.10.5.1.1.5 any other information the Board of Nursing deems necessary.

8.10.5.2 For other reasons stipulated under temporary permits elsewhere in these Rules and Regulations.

**3 DE Reg. 1373 (4/1/00)**

8.10.6 A lapsed temporary permit for designation is equivalent to a lapsed license and the same rules apply.

8.10.7 Failure of the certifying examination does not impact on the retention of the basic professional Registered Nurse licensure.

8.10.8 Any person practicing or holding oneself out as an Advanced Practice Nurse in any category without a Board authorized license in such category shall be considered an illegal practitioner and shall be subject to the penalties provided for violations of the Law regulating the Practice of Nursing in Delaware, (24 Del.C. Ch. 19).

8.10.9 Endorsement of Advanced Practice Nurse designation from another state is processed the same as for licensure by endorsement, provided that the applicant meets the criteria for an Advanced Practice Nurse license in Delaware.

**8.11 Maintenance of Licensure Status: Reinstatement**

8.11.1 To maintain licensure, the Advanced Practice Nurse must meet the requirements for recertification as established by the certifying agency.

8.11.2 The Advanced Practice Nurse must have practiced a minimum of 1500 hours in the past five years or no less than 600 hours in the past two years in the area of specialization in which licensure has been granted.

8.11.2.1 Faculty members teaching in graduate level clinical courses may count a maximum of 500 didactic course contact hours in the past five years or 200 in the past two years and all hours of direct on-site clinical supervision of students to meet the practice requirement.

8.11.2.2 An Advanced Practice Nurse who does not meet the practice requirement may be issued a temporary permit to practice under the supervision of a person licensed to practice medicine, surgery, dentistry, or advanced practice nursing, as determined on an individual basis by the Board.

8.11.3 The Advanced Practice Nurse will be

required to furnish the name(s) of the licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system with whom a current collaborative agreement exists.

8.11.4 Advanced Practice Nurses who fail to renew their licenses by February 28, May 31, or September 30 of the renewal period shall be considered to have lapsed licenses. After February 28, May 31, or September 30 of the current licensing period, any requests for reinstatement of a lapsed license shall be presented to the Board for action.

8.11.5 To reinstate licensure status as an Advanced Practice Nurse, the requirements for recertification and 1500 hours of practice in the past five years or no less than 600 hours in the past two years in the specialty area must be met or the process described in 8.11.4 followed.

8.11.6 An application for reinstatement of licensure must be filed and the appropriate fee paid.

**8.12 Audit of Licensees**

8.12.1 The Board may select licensees for audit two months prior to renewal in any biennium. The Board shall notify the licensees that they are to be audited for compliance of having a collaborative agreement.

8.12.1.1 Upon receipt of such notice, the licensee must submit a copy of a current collaborative agreement(s) within three weeks of receipt of the notice.

8.12.1.2 The Board shall notify the licensee of the results of the audit immediately following the Board meeting at which the audits are reviewed.

8.12.1.3 An unsatisfactory audit shall result in Board action.

8.12.1.4 Failure to notify the Board of a change in mailing address will not absolve the licensee from audit requirements.

8.12.2 The Board may select licensees for audit throughout the biennium.

**8.13 Exceptions to the Requirements to Practice**

8.13.1 The requirements set forth in 8.9 shall not apply to a Registered Nurse who is duly enrolled as a bona fide student in an approved educational program for Advanced Practice Nurses as long as the practice is confined to the educational requirements of the program and is under the direct supervision of a qualified instructor.

**8.14 Definitions**

**8.14.1 Collaborative Agreement - Includes**

8.14.1.1 A true collegial agreement between two parties where mutual goal setting, access, authority, and responsibility for actions belong to individual parties and there is a conviction to the belief that this collaborative agreement will continue to enhance patient outcomes and

8.14.1.2 a written document that outlines the process for consultation and referral between an Advanced Practice Nurse and a duly licensed Delaware physician, dentist, podiatrist or licensed Delaware health care delivery system. This document can include, but not be limited to, written verification of health care facility approved clinical

privileges or a health care facility approved job description of the A.P.N. If the agreement is with a licensed Delaware health care delivery system, the individual will have to show that the system will supply appropriate medical back-up for purposes of consultation and referral.

8.14.2 National Certification - That credential earned by an Advanced Practice Nurse who has met requirements of a Board of Nursing approved certifying agency.

8.14.3 Pharmacology/Pharmacotherapeutics - refers to any course, program, or offering that would include, but not be limited to, the identification of individual and classes of drugs, their indications and contraindications, their likelihood of success, their dosages, their side-effects and their interactions. It also encompasses clinical judgement skills and decision making. These skills may be based on thorough interviewing, history taking, physical assessment, test selection and interpretation, patho-physiology, epidemiology, diagnostic reasoning, differentiation of conditions, treatment decisions, case evaluation and non-pharmacologic interventions.

8.14.4 Prescription Order - includes the prescription date, the name of the patient, the name, address, area of specialization and business telephone number of the advanced practice nurse prescriber, the name, strength, quantity, directions for use, and number of refills of the drug product or device prescribed, and must bear the name and prescriber ID number of the advanced practice nurse prescriber, and when applicable, prescriber's D.E.A. number and signature. There must be lines provided to show whether the prescription must be dispensed as written or substitution is permitted.

8.15 Requirements for Initial Independent Practice/prescriptive Authority

An APN who has not had independent prescriptive authority within the past two years in Delaware or any other jurisdiction who is applying for independent practice and/or independent prescriptive authority shall:

8.15.1 Be an Advanced Practice Nurse (APN) holding a current permanent license issued by the Board of Nursing (BON). If the individual does not hold national certification, eligibility will be determined on a case by case basis.

8.15.2 Have completed a post basic advanced practice nursing program that meets the criteria as established in Section 4.7 of Article 7 of the Rules and Regulations of the Delaware Board of Nursing with documentation of academic courses in advanced health assessment, diagnosis and management of problems within the clinical specialty, advanced patho-physiology and advanced pharmacology/pharmacotherapeutics. In the absence of transcript verification of the aforementioned courses, applicants shall show evidence of content integration through course descriptions, course syllabi, or

correspondence from school officials. If the applicant cannot produce the required documentation, such applicant may petition the Joint Practice Committee for consideration of documented equivalent independent prescriptive authority experience.

8.15.3 Submit a copy of the current collaborative agreement to the Joint Practice Committee (JPC). The collaborative agreement(s) shall include arrangements for consultation, referral and/or hospitalization complementary to the area of the nurse's independent practice.

8.15.4 Show evidence of the equivalent of at least thirty hours of advanced pharmacology and pharmacotherapeutics related continuing education within the two years prior to application for independent practice and/or independent prescriptive authority. This may be continuing education programs or a three credit, semester long graduate level course. The thirty hours may also occur during the generic APN program as integrated content as long as this can be documented to the JPC. All offerings will be reviewed and approved by the JPC.

8.15.5 Demonstrate how submitted continuing education offerings relate to pharmacology and therapeutics within their area of specialty. This can be done by submitting the program titles to show content and dates attended. If the JPC questions the relevance of the offerings, the applicant must have available program descriptions, and/or learner objectives, and/or program outlines for submission to the JPC for their review and approval.

8.16 Requirements for Independent Practice/prescriptive Authority by Endorsement

An APN who has had prescriptive authority in another jurisdiction who is applying for independent practice and/or independent prescriptive authority shall:

8.16.1 Show evidence of meeting 8.15.1 and 8.15.3.

8.16.2 Show evidence of having current prescriptive authority in another jurisdiction.

8.16.3 Have no encumbered APN designation(s) in any jurisdiction.

8.16.4 Show evidence of completion of a minimum of ten hours of JPC approved pharmacology/pharmacotherapeutics related continuing education within the area of specialization and licensure within the past two years.

8.17 Application

8.17.1 Names and credentials of qualified applicants will be forwarded to the Joint Practice Committee for approval and then forwarded to the Board of Medical Practice for review and final approval.

8.18 Prescriptive Authority

8.18.1 APNs may prescribe, administer, and dispense legend medications including Schedule II - V controlled substances, (as defined in the Controlled Substance Act and labeled in compliance with 24 Del.C.

Section 2536(C), parenteral medications, medical therapeutics, devices and diagnostics.

8.18.2 APNs will be assigned a provider identifier number as outlined by the Division of Professional Regulation.

8.18.3 Controlled Substances registration will be as follows:

8.18.3.1 APNs must register with the Drug Enforcement Agency and use such DEA number for controlled substance prescriptions.

8.18.3.2 APNs must register biennially with the Office of Narcotics and Dangerous Drugs in accordance with 16 **Del.C.**, Section 4732(a).

8.18.4 APNs may request and issue professional samples of legend, including schedule II-V controlled substances, and over-the-counter medications that must be labeled in compliance with 24 **Del.C.**, Section 2536(C).

8.18.5 APNs may give verbal prescription orders.

#### 8.19 Prescriptive Writing

8.19.1 All prescription orders will be written as defined by the Delaware Board of Pharmacy as defined in 8.14.4.

#### 8.20 Renewal

8.20.1 Maintain current APN licensure.

8.20.2 Maintain competency through a minimum of ten hours of JPC approved pharmacology/pharmacotherapeutics related continuing education within the area of specialization and licensure per biennium. The pharmacology/ pharmacotherapeutics content may be a separate course or integrated within other offerings.

#### 8.21 Disciplinary Proceedings

~~8.21.1 Complaints against an APN will be forwarded to the Division of Professional Regulation. A complaint related to independent practice/prescriptive authority will be referred to the Joint Practice Committee for review and disposition and then forwarded to the Board of Medical Practice for review and final approval in an expeditious manner.~~

~~8.21.2 All other complaints regarding APNs will continue to be under the sole jurisdiction of the Board of Nursing.~~

#### **See 4 DE Reg. 296 (8/1/00)**

8.21.1 Pursuant to 24 Del. C., §1906(19)(c), the Joint Practice Committee is statutorily empowered, with the approval of the Board of Medical Practice, to grant independent practice and/or prescriptive authority to nurses who qualify for such authority. The Joint Practice Committee is also empowered to restrict, suspend or revoke such authority also with the approval of the Board of Medical Practice.

8.21.2 Independent practice or prescriptive authority may be restricted, suspended or revoked where the nurse has been found to have committed unprofessional conduct in his or her independent practice or prescriptive

authority or if his or her mental or physical faculties have changed or deteriorated in such a manner as to create an inability to practice or prescribe with reasonable skill or safety to patients.

8.21.3 Unprofessional conduct, for purposes of restriction, suspension or revocation of independent practice or prescriptive authority shall include but not be limited to:

8.21.3.1 The use or attempted use of any false, fraudulent or forged statement or document or use of any fraudulent, deceitful, dishonest or immoral practice in connection with any acquisition or use of independent practice or prescriptive authority;

8.21.3.2 Conviction of a felony;

8.21.3.3 Any dishonorable or unethical conduct likely to deceive, defraud or harm the public;

8.21.3.4 Use, distribution or prescription of any drugs or medical devices other than for therapeutic or diagnostic purposes;

8.21.3.5 Misconduct, incompetence, or gross negligence in connection with independent or prescriptive practice;

8.21.3.6 Unjustified failure upon request to divulge information relevant to authorization or competence to independently practice or exercise prescriptive authority to the Executive Director of the Board of Nursing or to anyone designated by him or her to request such information.

8.21.3.7 The violation of the Nurse Practice Act or of an Order or Regulation of the Board of Nursing or the Board of Medical Practice related to independent practice or prescriptive authority.

8.21.3.8 Restriction, suspension, or revocation of independent practice or prescriptive authority granted by another licensing authority in any state, territory or federal agency.

8.21.4 Complaints concerning the use or misuse of independent practice or prescriptive authority received by the Division of Professional Regulation or the Board of Nursing shall be investigated in accordance with the provisions of Title 29, Section 8807 governing investigations by the Division of Professional Regulation. As soon as convenience permits, the Board of Nursing shall assign an Investigating Board Member to assist with the investigation of the complaint. The Investigating Board Member shall, whenever practical, be a member of the Joint Practice Committee.

8.21.5 Upon receipt of a formal complaint from the Office of the Attorney General seeking the revocation, suspension or restriction of independent practice or prescriptive authority, the Committee Chairperson shall promptly arrange for not less than a quorum of the Committee to convene for an evidentiary hearing concerning such complaint upon due notice to the licensee against whom the complaint has been filed. Such notice shall comply with

the provisions of the Administrative Procedures Act (29 Del. C., Chapter 101).

8.21.6 The hearing shall be conducted in accordance with the Administrative Procedures Act (29 Del. C., §101), and after the conclusion thereof, the Joint Practice Committee will promptly issue a written Decision and Order which shall be based upon the affirmative vote of a majority of the quorum hearing the case.

8.21.7 Any written Decision and Order of the Joint Practice Committee which imposes a restriction, suspension or revocation of independent practice or prescriptive authority shall not be effective prior to the approval of the Board of Medical Practice.

## 12.0 Advisory Committees

### 12.1 Appointment of Committees

12.1.1 The Board may appoint advisory committees to assist in the performance of its duties.

12.1.2 Advisory committees will be chaired by a Board member.

12.1.3 Each advisory committee shall consist of members who have expertise in the subject assigned.

12.1.4 Any such advisory committee shall function in the public interest, and no member shall be designated as representative of any agency or organization.

### 12.2 Membership of Committees

12.2.1 Potential members shall submit resumes and receive Board approval prior to appointment.

12.2.2 Members may include Registered Nurses, Licensed Practical Nurses, Advanced Practice Nurses and lay persons.

### 12.3 Joint Practice Committee

#### 12.3.1 Membership

12.3.1.1 Members are selected Del. C., § 1906(19)

12.3.1.2 The Board of Nursing shall appoint the Advanced Practice Nurses (APN) under the following guidelines:

12.3.1.2.1 At least one of the APN members shall be a Clinical Specialist, one APN member a Certified Nurse Midwife, one APN member a Certified Registered Nurse Anesthetist, and two APN members Nurse Practitioners. If there is no qualified APN available in the needed specialty, then appointments shall be made from APNs in other specialties.

12.3.1.2.2 The APNs must have independent prescriptive authority to be a member of the JPC.

12.3.1.2.3 The Board of Nursing shall appoint one public member.

12.3.1.3 One of the Board of Nursing appointees shall be a current Board of Nursing Member.

12.3.1.4 The Executive Director of the Board of Nursing shall make a call for applications for potential

members to fill vacancies on the JPC. The potential members shall submit their resumes to the Executive Director. The resumes shall be reviewed by the Executive Director and the APN member of the Board of Nursing. They shall then make recommendations to the Board of Nursing for approval and appointment of the members to the JPC.

12.3.1.5 Members shall serve two-year terms.

12.3.1.6 The Executive Director shall verify members' continued interest in serving on the JPC prior to expiration of their two-year term. The Executive Director shall submit the names of the JPC members who are interested in serving another term on the JPC to the Board of Nursing for reappointment to the JPC.

12.3.1.7 Members who miss three consecutive meetings shall be reported to the appointing Board which may appoint a replacement member.

12.3.1.8 JPC shall be staffed by the Executive Director of the Board of Nursing or designee who shall assist the JPC in carrying out its duties.

#### 12.3.2 Officers

12.3.2.1 JPC members shall elect a Chair and Vice-Chair each September.

12.3.2.2 The Chair shall preside at meetings and hearings.

12.3.2.3 The Vice-Chair shall preside at the meetings and hearings in the absence of the Chair.

12.3.2.4 In the absence of the Chair and Vice-Chair, the next senior member shall preside.

#### 12.3.3 Meetings

12.3.3.1 Meetings will be scheduled in accordance with all Laws and Rules and Regulations that apply to Committees under the Division of Professional Regulation.

12.3.3.2 Five members of the JPC constitute a quorum.

12.3.3.3 A meeting calendar shall be approved by the JPC each September.

12.3.3.4 The JPC shall meet as necessary to carry out its responsibilities as defined in 24 Del. C., §1906(20).

12.3.3.5 The Board of Nursing Members on the JPC shall give the committee report at each Board of Nursing meeting. The Executive Director shall give the report if the Board Member is absent.

**DEPARTMENT OF EDUCATION**

Statutory Authority: 14 Delaware Code,  
Section 122(a) (14 Del.C. §122(a))

**Educational Impact Analysis Pursuant  
To 14 Del. C. Section 122(D)****201 School Shared Decision-making Transition  
Planning Grants****205 School Shared Decision-making Transition  
Planning Grants****210 Approval Of School Improvement Grants****A. Type Of Regulatory Action Requested**

Reauthorization of Existing Regulation

**B. Synopsis Of Subject Matter Of Regulation**

The Secretary of Education seeks the approval of the State Board of Education to reauthorize the following regulations: 201 School Shared Decision-Making Transition Planning Grants, 205 District Shared Decision-Making Transition Planning Grants and 210 Approval of School Improvement Grants. These regulations have not changed and are recommended for re-authorization because 14 *Del. C.* Chapter 8, School Shared Decision-Making requires the Department of Education to have regulations in these three areas. The implementation timetables in Chapter 8 have passed and recourses are no longer available but the statute remains in the *Delaware Code* and the regulations must be preserved.

**C. Impact Criteria**

1. Will the reauthorized regulations help improve student achievement as measured against state achievement standards? The reauthorized regulations address the submission and approval of planning grants not achievement standards.

2. Will the reauthorized regulations help ensure that all students receive an equitable education? The reauthorized regulations address the submission and approval of planning grants not equity issues.

3. Will the reauthorized regulations help to ensure that all students' health and safety are adequately protected? The reauthorized regulations address the submission and approval of planning grants not health and safety issues.

4. Will the reauthorized regulations help to ensure that all students' legal rights are respected? The reauthorized regulations address the submission and approval of planning grants not students' legal rights..

5. Will the reauthorized regulations preserve the necessary authority and flexibility of decision makers at the local board and school level? The reauthorized regulations will preserve the necessary authority and flexibility of

decision makers at the local board and school level.

6. Will the reauthorized regulations place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The reauthorized regulations will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision-making authority and accountability for addressing the subjects to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subjects to be regulated will remain in the same entity.

8. Will the reauthorized regulations be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The reauthorized regulations will be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of these regulations? The *Delaware Code*, Chapter 8 requires the Department of Education to make these regulations.

10. What is the cost to the state and to the local school boards of compliance with these regulations? In the past the legislature has provided the funds necessary to implement these regulations.

**201 School Shared Decision-Making Transition  
Planning Grants**

1.0 Requests for a school shared decision-making transition planning grant shall be submitted via the local board of education to the Office of the Secretary of Education, Delaware Department of Education, P.O. Box 1402, Townsend Building, Dover, DE 19903. Grant requests shall include the following information:

2.0 A copy of the Report and Recommendations of the School Advisory Committee. The Report must be signed by a representative of each stakeholder group that participated in the process and should include the following information, indicating that the requirements of 14 Del. C. § 804. have been met.

2.1 School Advisory Committee (list names and groups represented)

2.2 Listing of the structured conversations and a brief description of the activities

2.3 Brief description of how stakeholders made a good faith effort to communicate with their constituent groups

2.4 Recommendation to develop a school transition plan to implement shared decision-making

2.5 Process for establishing a school transition plan

2.6 Process for determining the composition and roles and responsibilities delegated to the School Transition Team

3.0 The School Transition Team (list names and groups represented).

3.1 A description of the process for the School Transition Team to reach decisions and resolve conflicts.

4.0 Assurance that the school has committed to develop a school improvement plan including comprehensive school improvement goals tied to state and local academic performance standards and strategies to achieve these goals and including staff development for building the necessary capacities and skills to successfully implement shared decision-making and improve parental involvement.

5.0 A description of the plan for communicating the results of the school improvement plan to the broader school community for information and critical review.

6.0 A description of how the various stakeholder groups will formally express their opinion regarding the school transition plan prior to its adoption by the local board of education.

7.0 Signatures of each stakeholder group representative indicating the stakeholder's belief that the grant should be awarded to the school. Any stakeholder refusing to sign should explain why as part of the grant request.

8.0 Assurance that a copy of the Report and Recommendations is posted within the school for public review.

9.0 Assurance that each stakeholder signing the Report and Recommendations has received a copy of the signed report, as well as a copy of the grant request.

10.0 Procedure to be used by interested parties to obtain a copy of the school grant request.

### **205 District Shared Decision-Making Transition Planning Grants**

1.0 Requests for a district shared decision-making transition planning grant shall be submitted to the Office of the Secretary of Education, Delaware Department of Education, P.O. Box 1402, Townsend Building, Dover, DE 19903. Grant requests shall include the following information:

1.1 The Board Resolution endorsing both the concept of shared decision-making and the Report and Recommendations of the District Advisory Committee.

1.2 A copy of the Report and Recommendations of the District Advisory Committee. The Report must be signed by a representative of each stakeholder group that participated in the process and should include the following information, indicating that the requirements of 14 Del. C. §

802 have been met.

1.2.1 District Advisory Committee (list names and groups represented)

1.2.2 Listing of the structured conversations and a brief description of the activities

1.2.3 Brief description of how stakeholders made a good faith effort to communicate with their constituent groups

1.2.4 Recommendation to develop a district transition plan to implement shared decision-making

1.2.5 Process for establishing a district transition plan

1.2.6 Process for determining the composition and roles and responsibilities delegated to the District Transition Team

1.3 The District Transition Team (list names and groups represented).

1.4 A description of the process for the District Transition Team to reach decisions and resolve conflicts.

1.5 A description of the plan for communicating the results of the district transition plan to the broader school community for information and critical review.

1.6 Acknowledgment that within the district transition plan there must be a policy for supporting shared decision-making activities from the local budget, including the school improvement planning process set forth in 14 Del. C. § 806, and acknowledgment that funds must be specifically identified and made available for use by school committees.

1.7 A description of how the various stakeholder groups will formally express their opinion regarding the district transition plan prior to its adoption by the local board of education.

1.8 Signatures of each stakeholder group representative indicating the stakeholder's belief that the grant should be awarded to the district. Any stakeholder refusing to sign should explain why as part of the grant request.

1.9 Assurance that a copy of the Report and Recommendations is posted within the district for public review.

1.10 Assurance that each stakeholder signing the Report and Recommendations has received a copy of the signed report, as well as a copy of the grant request.

1.11 Procedure to be used by interested parties to obtain a copy of the district grant request.

### **210 Approval of School Improvement Grants**

1.0 A school that has an approved shared decision-making transition plan as specified in 14 Del. C. §806, may apply for a school improvement implementation grant. To apply for a grant, the principal of the eligible school should submit a letter of request to the Office of the Secretary of

Education, Delaware Department of Education, P. O. Box 1402, Townsend Building, Dover, DE 19903. Requests shall include the following information:

1.1 Evidence that the local board of education has adopted the school's transition plan; and

1.2 The school improvement plan containing the following components:

1.2.1 Comprehensive school improvement goals tied to state and local academic performance standards and strategies to achieve these and other goals identified by the school, including staff development and parental involvement;

1.2.2 A description of the rationale for the proposed governance structure, stating how and why the governance process should improve decision-making and support continuous improvement in teaching and student learning;

1.2.3 Evidence of review by the broader school community with agreement that the school improvement plan is consistent with the school district plan and evidence that the local board of education has formally adopted the school's improvement plan;

1.2.4 A proposed budget that explains the use of resources allocated to the school to support strategies for achieving the school improvement goals;

1.2.5 The structural changes or procedures for providing the necessary time and skill-building to support shared decision-making and continuous improvement in teaching and student learning;

1.2.6 The assessment and evaluation process that the school will use to measure its progress toward achieving its stated goals;

1.2.7 A proposed timeline for phasing-in the school improvement plan; and

1.2.8 A proposed budget for the use of the school improvement grant.

2.0 A school with an approved application shall be eligible for a school improvement grant for the following (3) years as provided in the annual appropriations act. Subsequent applications may be made only after the review and evaluation of the school improvement plan required by 14 Del. C. §808 is completed and the results of such are included in the school's application.

**See 1 DE Reg. 1400 (3/1/98)**

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## **DEPARTMENT OF FINANCE**

### **DIVISION OF REVENUE**

#### **DELAWARE STATE LOTTERY OFFICE**

Statutory Authority: 29 Delaware Code, Section 4805(a) (29 **Del.C.** §4805(a))

The Delaware Lottery Office proposes this Regulation amendment pursuant to 29 Del. C. §4805(a). The Lottery will accept written comments from November 1, 2001 through November 30, 2001. The Lottery will hold a public hearing on the proposed amendments on November 26, 2001 at 10:00 a.m. at the Lottery Office, Second Floor Conference Room, 1575 McKee Road, Suite 102, Dover, DE 19904-1903. Written comments should be submitted to the Lottery at the above address and noted to the attention of Lottery Director Wayne Lemons.

#### **5.0 Technology Providers: Contracts; Requirements; Duties**

5.1 The Director shall, pursuant to the procedures set forth in chapter 69 of title 29 of the Delaware Code, enter into contracts with licensed technology providers as he or she shall determine to be appropriate, pursuant to which the technology providers shall furnish by sale or lease to the State video lottery machines in such members and for such video games as the Director shall approve from time to time as necessary for the efficient and economical operation of the lottery, or convenience of the players, and in accordance with the agents business plans as approved and amended by the Director. ~~No single technology provider shall supply more than 65% of the total number of video lottery machines at the premises of any agent.~~ No more than 1,000 video lottery machines shall be located within the confines of an agents premises unless the Director approves up to an additional 1,000 machines or other number approved by the Director as permitted by law.

5.2 All contracts with technology providers who are video lottery machine manufacturers shall include without limitation, provisions to the following effect:

5.2.1 The technology provider shall furnish a person to work with the agency and its consultants to provide assistance as needed in establishing, planning and executing acceptance tests on the video lottery machines provided by such technology provider. Technology provider assistance shall be provided as requested by the agency in troubleshooting communication and technical problems that are discovered when video lottery machines are initially placed at the agent's site;

5.2.2 The technology provider shall submit video lottery machine illustrations, schematics, block diagrams, circuit analysis, technical and operation manuals, program source code and object code and any other information requested by the Director for purposes of analyzing and

testing the video lottery machines. A maximum of Twenty Five Dollars (\$25) shall be permitted for wagering on a single play of any video game;

5.2.3 For testing, examination and analysis purposes, the technology provider shall furnish working models of video lottery machines, associated equipment, and documentation at locations designated by the Director. The technology provider shall pay all costs of any testing, examination, analysis and transportation of the video lottery machines, which may include the entire dismantling of the machines and some tests that may result in damage or destruction to one or more electronic components of the machines. The agency and its agents shall have no liability for any damage or destruction. The agency may require that the technology provider provide specialized equipment or the agency may employ the services of an independent technical laboratory expert to test the video lottery machine at the technology provider's expense;

5.2.4 Technology providers shall submit all hardware, software, and test equipment necessary for testing of their video lottery machines, and shall provide the director with keys and locks subject to the Director's specifications for each approved video lottery machine;

5.2.5 The EPROMs of each video lottery machine shall be certified to be in compliance with published specifications;

5.2.6 No video lottery machine shall be put into use prior to certification of its model by the Director;

5.3 All contracts with technology providers shall include without limitation, provisions to the following effect:

5.3.1 Technology providers shall agree to promptly report any violation or any facts or circumstances that may result in a violation of these rules; provide immediate access to all its records and its physical premises for inspection at the request of the Director; attend all trade shows or conferences as required by the Director;

5.3.2 Technology providers shall agree to modify their hardware and software as necessary to accommodate video game changes directed by the agency from time to time;

5.3.3 Technology providers shall provide such bonds and provide evidence of such insurance as the Director shall require from time to time and in such amounts and issued by such companies as the Director shall approve; and

5.3.4 Technology providers shall have a valid license to conduct business in the State of Delaware, shall comply with all applicable tax provisions, and shall in all other respects be qualified to conduct business in Delaware.

5.4 Each video lottery machine certified by the Director shall bear a decal and shall conform to the exact specifications of the video lottery machine model tested and certified by the Director.

5.5 No video lottery machine may be transported out of the State until the decal has been removed and no decal shall be removed from a video lottery machine without prior agency approval.

5.6 Technology providers shall hold harmless the agency, the State of Delaware, and their respective employees for any claims, loss, cost, damage, liability or expense, including, without limitation, legal expense arising out of any hardware or software malfunction resulting in the wrongful award or denial of credits or cash.

5.7 A technology provider shall not distribute a video lottery machine for placement in the state unless the video lottery machine has been approved by the agency. Only licensed technology providers may apply for approval of a video lottery machine or associated equipment. The technology provider shall submit two copies of video lottery machine illustrations, schematics, block diagrams, circuit analysis, technical and operation manuals, program source code and object code, and any other information requested by the agency for purposes of analyzing and testing the video lottery machine or associated equipment.

5.8 The agency may require that two working models of a video lottery machine be transported to the location designated by the agency for testing, examination, and analysis. The technology provider shall pay all costs of testing, examination, analysis and transportation of such video lottery machine models, which may include the entire dismantling of the video lottery machine and tests which may result in damage or destruction to one or more electronic components of such video lottery machine model. The agency may require that the technology provider provide specialized equipment or the services of an independent technical expert in testing the terminal.

5.9 After each test has been completed, the agency shall provide the video lottery machine technology provider with a report that contains findings, conclusions, and pass/fail results. Prior to approving a particular video lottery machine model, the agency may require a trial period not in excess of sixty (60) days for a licensed agent to test the video lottery machine. During the trial period, the technology provider may not make any modifications to the video lottery machine model unless such modifications are approved by the agency.

5.10 The technology provider is responsible for the assembly and initial operation, in the manner approved and licensed by the agency, of all its video lottery machines and associated equipment. The technology provider may not change the assembly or operational functions of any of its video lottery machines approved for placement in Delaware unless a "request for modification to an existing video lottery machine prototype" is made to the agency, that request to contain all appropriate information relating to the type of change, reason for change, and all documentation required. The agency must approve such request prior to any changes

being made, and the agency shall reserve the right to require second testing of video lottery machines after modifications have been made.

5.11 Each video lottery machine approved for placement in a licensed agent's place of business shall conform to the exact specifications of the video lottery machine prototype tested and approved by the agency. Any video lottery machine which does not so conform shall be disconnected from the Delaware video lottery system until compliance has been achieved. Each video lottery machine shall at all times operate and be placed in accordance with the provisions of these regulations.

5.12 The following duties are required of all licensed technology providers, without limitation:

5.12.1 Manufacture terminals and associated equipment for placement in Delaware in accordance with the specifications of the agency.

5.12.2 Manufacture terminals and associated equipment to ensure timely delivery to licensed Delaware agents.

5.12.3 Maintain and provide an inventory of associated equipment to assure the timely repair and continued, approved operation and play of licensed video lottery machines acquired under the contract for placement in Delaware.

5.12.4 Provide an appropriate number of service technicians with the appropriate technical knowledge and training to provide for the service and repair of its licensed video lottery machines and associated equipment so as to assure the continued, approved operation and play of those licensed video lottery machines acquired under contract for placement in Delaware.

5.12.5 Obtain any certification of compliance required under the applicable provisions of rules adopted by the Federal Communications Commission.

5.12.6 Promptly report to the agency any violation or any facts or circumstances that may result in a violation of State or Federal law and/or any rules or regulations adopted pursuant thereto.

5.12.7 Conduct video lottery operations in a manner that does not pose a threat to the public health, safety, or welfare of the citizens of Delaware, or reflect adversely on the security or integrity of the video lottery.

5.12.8 Hold the agency and the State of Delaware and its employees harmless from any and all claims that may be made against the agency, the State of Delaware, or the employees of either, arising from the technology provider's participation in or the operation of a video lottery game.

5.12.9 Defend and pay for the defense of all claims that may be made against the agency, the State of Delaware, or the employees of either, arising from the technology provider's participation in video lottery operations.

5.12.10 Maintain all required records.

5.12.11 Lease or sell only those licensed video

lottery machines, validation units and associated equipment approved under these regulations.

5.12.12 It shall be the continuing duty of the technology provider licensee to provide the Director with an updated list of the names and addresses of all its employees who are involved in the daily operation of the video lottery machines. These employees will include individuals or their supervisors involved with (1) the repair or maintenance of the video lottery machines, or (2) positions that provide direct access to the video lottery machines. It shall be the continuing duty of the technology provider licensee to provide for the bonding of each of these individuals to ensure against financial loss resulting from wrongful acts on their parts.

5.12.13 It shall be the ongoing duty of the technology provider licensee to notify the Director of any change in officers, partners, directors, key employees, video lottery operations employees, or owners. These individuals shall also be subject to a background investigation. The failure of any of the above-mentioned individuals to satisfy a background investigation may constitute "cause" for the suspension or revocation of the technology provider's license.

5.12.14 Provide the agents with the technical ability to distribute the proceeds of the video lottery in accordance with the requirements of these regulations and 29 **Del.C. Ch. 48.**

5.12.15 Supervise its employees and their activities to ensure compliance with these rules.

5.12.16 Promptly report to the Lottery any violation or any facts or circumstances that may result in a violation of State or Federal law and/or any rules or regulations pursuant thereto, excluding violations concerning motor vehicle laws.

5.12.17 Comply with such other requirements as shall be specified by the Director.

**2 DE Reg. 115 (7/1/98)**

**2 DE Reg. 779 (11/1/98)**

**3 DE Reg. 1082 (2/1/00)**

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## **DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

### **DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code,  
Section 122(3)h (16 **Del.C.** §122(3)h)

These regulations, "**The State of Delaware Rules and Regulations Pertaining to the Practice of Non-Nurse Midwifery,**" replace by rescision the current "State of Delaware Rules and Regulations Pertaining to the Practice of Certified Midwifery" previously adopted on April 17, 1978 and most recently amended May 15, 1985.

The new regulations establish and define conditions under which individuals may be granted permits to practice direct entry/non-nurse midwifery in the State of Delaware. The Department of Health and Social Services, through the Division of Public Health, will recognize and issue a permit to practice midwifery for direct entry/non-nurse midwives.

### Notice Of Public Hearing

The Community Health Care Access Section, Division of Public Health, Department of Health & Social Services, will hold a public hearing to discuss the proposed adoption of new "State of Delaware Rules and Regulations Pertaining to the Practice of Non-Nurse Midwifery." The public hearing will be held on November 28, 2001, at 3:00 PM, in Room 400B, Delaware Technical and Community College, Terry Campus, Route 13 & Denny's Road, Dover, Delaware.

Information concerning the proposed regulation is available at the following location:

Community Health Care Access Section  
Jesse Cooper Building  
Federal and Water Streets  
Dover, Delaware 19901  
Telephone: (302) 739-4735

Anyone wishing to present his or her oral comments at this public hearing should contact Dave Walton at (302) 739-4700 by November 27, 2001. Anyone wishing to submit written comments as a supplement to, or in lieu of, oral testimony should submit such comments by December 3, 2001, to:

Dave Walton, Hearing Officer  
Division of Public Health  
P.O. Box 637  
Dover, Delaware 19903-0637

### Delaware State Board Of Health Rules And Regulations Pertaining To The Practice Of Midwifery

Adopted by the State Board of Health on April 17, 1978, amended September 19, 1978, and December 22, 1982, and amended to be effective 5/15/85.

Under the authority granted to the State Board of Health under 16 Del. C. §122 (3) (h), the Board of Health of the State of Delaware hereby adopts the following regulations pertaining to the practice of midwifery in the State of Delaware.

#### Section I - Definitions

a. Midwifery is the management of the woman

~~throughout an essentially uncomplicated maternity cycle and includes the immediate care of the newborn. Management may include but is not limited to the following acts: physical examination during the maternity cycle; history taking; prenatal, postpartum and family planning education and counseling; preparation for childbirth; physical and emotional monitoring during labor and delivery including diagnostic tests; attending spontaneous vaginal births; routine inspection of the vagina and cervix throughout the maternity cycle; providing local anesthesia for perineal repair; performing and repairing episiotomies; resuscitating the newborn according to accepted procedures; documenting activities in appropriate maternity records; signing Birth Certificates. Provided, however, that these regulations shall not apply to a person assisting a licensed physician who may perform any of the above listed acts, or under emergency circumstances.~~

~~b. Essentially uncomplicated refers to periodic mutual determinations by the midwife and physician that the woman's physical and support needs can be met safely by a midwife.~~

~~e. Alliance is a relationship between a midwife and a physician(s) licensed to practice medicine or osteopathy in Delaware whereby medical consultation and referral, available on a 24-hour basis, is agreed upon in writing, signed by both parties, and filed with the State Board of Health.~~

#### Section II - Qualifications

~~No permit to practice midwifery in the State of Delaware shall be issued by the State Board of Health unless an applicant can demonstrate that said applicant has met the following qualifications:~~

- ~~a. Age of 21 years or older;~~
- ~~b. Licensed as a Registered Professional Nurse in the State of Delaware;~~
- ~~e. Possesses a valid certification by the American College of Nurse-Midwives;~~
- ~~d. Submits a sworn statement that he/she has not been convicted of a felony; been professionally penalized or convicted of substance addiction; had a professional nursing license suspended or revoked in this or another state; been professionally penalized or convicted of fraud; is physically and mentally capable of engaging in the practice of midwifery; and~~
- ~~d. Has formed an alliance.~~

#### Section III - Application

~~Any person desiring to obtain a permit to practice midwifery shall make a written application to the Secretary of the State Board of Health. Such application shall be accompanied by the necessary documents setting forth the facts that the applicant possesses the qualifications in Section II. If after investigation of the application by the~~

State Board of Health or its designee, it appears the applicant is qualified to practice midwifery, the State Board of Health shall issue a permit to practice midwifery in the State of Delaware.

#### Section IV – Maintenance of Permit

No person granted a permit under these regulations shall engage in active practice of midwifery without having an established alliance with a physician(s) licensed to practice medicine or osteopathy in the State of Delaware. Should the alliance be terminated during the permit period, the midwife must form a new alliance and submit the agreement to the State Board of Health before continuing to practice as a midwife. Failure to do so will result in automatic and immediate revocation of permit.

Loss of certification as a midwife from the American College of Nurse-Midwives or suspension or revocation of the license to practice professional nursing in Delaware will result in automatic and immediate revocation of the permit to practice midwifery in Delaware.

#### Section V – Renewal of Permit

Any permit granted to practice midwifery in the State of Delaware shall terminate annually on December 31. The fee for such annual permit shall be \$15.00. Said permit shall be renewable annually with the filing of an application and documentation setting forth continued qualification in items "b" through "e" of Section II. Should said permit not be renewed by January 31, the permit is considered lapsed and the midwife shall apply according to Section III.

#### Section VI – Exclusion

Any person who on September 19, 1978, held a valid permit issued by the State Board of Health to practice midwifery in the State of Delaware may be granted a permit to practice midwifery even though that person does not meet the qualifications specified in items "b" and "e" of Section II of these Rules and Regulations providing such midwife must continue to demonstrate to the State Board of Health full compliance with all other provisions of these Regulations and any special conditions as set forth by the State Board of Health to assure full compliance with all other provisions.

#### Section VII – Complaints

Any person may make a complaint in writing to the State Board of Health concerning incompetency, negligence, addiction to drugs and/or alcohol, physical or mental impairment, misrepresentation, willful breach of confidence, failure of a midwife to report a birth, or failure to otherwise comply with these regulations. Complaints shall be investigated by the State Board of Health or its designee and a determination made as to the need for a hearing. In the event a hearing is to be held, the midwife shall be notified by certified mail at least fifteen (15) days prior to the hearing as to the time and place of the hearing and any allegations

which the Board intends to investigate. If such complaint is found to be justified, the permit of the midwife against whom the complaint has been lodged may, at the discretion of the State Board of Health, be revoked or suspended.

#### Section VIII – Illegal Practice

Any person who practices as a midwife as defined in item "a" of Section I in the State of Delaware without a permit issued by the State Board of Health shall be subject to a fine pursuant to 16 Del. C. § 107.

#### Section IX – Effective Date

These Regulations shall become effective January 14, 1983, and shall replace Rules and Regulations Pertaining to the Practice of Midwifery which were in effect until that date.

#### Section X – Severability

Should any section, sentence, clause, or phrase of these Rules and Regulations be legally declared unconstitutional or invalid for any reason, the remainder of said Rules and Regulations shall not be affected thereby.

Amendment To  
Delaware State Board Of Health  
Rules And Regulations Pertaining To The  
Practice Of Midwifery

A waiver to the qualifications requirements may be approved by the State Board of Health to allow practice by a traditional midwife under the following circumstances and qualifications:

a. Evidence is submitted to the State Board of Health of a reasonable attempt to secure a licensed professional midwife.

b. An alliance has been formed with a physician licensed in Delaware and certified by the American Board of Obstetrics and Gynecology.

e. Evidence is submitted of acceptable training and experience as a midwife that meets criteria established by the Board.

d. Is at least 21 years of age.

e. Submits a sworn statement that he/she has not been convicted of a felony or charged with substance abuse, and is physically and mentally capable of engaging in such practice.

f. The area of practice shall be limited, by agreement with the allied physician, to a population which is medically underserved or has religious tenets opposed to medical practices.

g. Agrees to abide by all laws and regulations applicable to the care of newborn infants and registration of births.

If the above requirements are met, a limited license may be approved, to be renewed annually, and the license so designated.

Adopted by the State Board of Health to become effective May 15, 1985.

**State Of Delaware**  
**Rules And Regulations Pertaining To The**  
**Practice Of Non-Nurse Midwifery**

These regulations replace regulations previously adopted on April 17, 1978; amended September 19, 1978, December 22, 1982, and May 15, 1985, by the Delaware State Board of Health. Effective Date: Xxx xx, xxxx.

**Section I – Purpose**

The purpose of these Regulations is to establish and define conditions under which individuals may be granted permits to practice direct entry/non-nurse midwifery in the State of Delaware. The Department of Health and Social Services, through the Division of Public Health, will recognize and issue a permit to practice midwifery for direct entry/non-nurse midwives.

**Section II – Authority**

Title 16, Delaware Code, Chapter 1, Section 122 (3) h.

**Section III – Definitions**

a. Midwifery practice: is the management of women's health care, focusing particularly on pregnancy, childbirth, the postpartum period, care of the newborn, and the family planning and gynecological needs of women, including the prescription of appropriate medications and devices within this defined scope of practice. The midwife practices within a health care system that provides for consultation, collaborative management or referral as indicated by the health status of the client.

b. Direct entry/non-nurse midwife: A person who has met the qualifications and received a permit from the Delaware Division of Public Health to practice midwifery in Delaware who is not licensed as an advanced practice nurse midwife.

c. Certified midwife: A person who has met the criteria stated in Section IVa (possesses a valid certification by national certification body).

d. Collaborative Agreement: Written verification of health care facility approved clinical privileges; or health care facility approved job description; or a written document that outlines the process for consultation and referral between a direct entry/non-nurse midwife and a physician.

e. Guidelines/Protocols: Suggested pathways to be followed by direct entry/non-nurse midwives for managing a

particular medical problem. These guidelines/protocols shall be developed collaboratively by the midwife and a licensed physician.

f. Referral: The process whereby a direct entry/non-nurse midwife directs the client to a physician or another health care professional for management of a particular problem or aspect of the client's care.

**Section IV - Qualifications**

To receive a permit to practice direct entry/non-nurse midwifery in the State of Delaware, an applicant must submit documentation to the Division of Public Health that they meet the following qualifications:

a. Possesses a valid certification by the American College of Nurse-Midwives Certification Council, Inc.; has completed a midwifery education program accredited by the ACNM's Division of Accreditation; or has completed an equivalent program of studies as determined by the certification agency, including Certified Professional Midwives (CPM) and/or Certified Midwife (CM).

b. Submits a sworn statement that he/she has not been convicted of a felony; been professionally penalized or convicted of substance addiction; had a professional midwifery license suspended or revoked in this or another state; been professionally penalized or convicted of fraud; and is physically and mentally capable of engaging in the practice of midwifery.

c. Establishes a collaborative agreement with a medical provider which includes at a minimum:

- a minimum number of medical provider prenatal visits.
- guidelines and protocols that must include access and use of oxygen, medications (including Intravenous medications), emergency protocols for labor, delivery, and postpartum for both mother and neonate.

d. Possesses personal medical malpractice insurance.

e. Submits to the Division of Public Health a sample contract between the midwife and the pregnant women outlining the scope of practice and potential risk factors and complications.

**Section V – Application**

Any person who wishes to obtain a permit to practice direct entry/non-nurse midwifery shall make a written application to the Division of Public Health. Such application shall be accompanied by the necessary documents demonstrating that the applicant possesses the qualifications in Section IV. If, after investigation of the application by the Division of Public Health, it appears the applicant is qualified to practice direct entry/non-nurse midwifery, a permit to practice midwifery in the State of

Delaware will be issued.

**Section VI – Maintenance of Permit**

No person granted a permit under these regulations shall engage in active practice of direct entry/non-nurse midwifery without continuously meeting the qualifications in Section IV. Changes that occur during the permit period (one year) must be reported to the Division of Public Health.

**Section VII – Renewal of Permit**

Any permit granted to practice direct entry/non-nurse midwifery in the State of Delaware shall terminate annually on December 31. The fee for such annual permit shall be determined annually (in July) by the Division of Public Health and not be less than \$15.00. Permits shall be renewable annually with the filing of an application and documentation setting forth continued qualifications as specified in Section IV. Should a permit not be renewed by January 31, the permit is considered lapsed and the direct entry/non-nurse midwife shall apply according to Section V.

**Section VIII – Complaints**

The Division of Public Health may, upon receipt of a complaint or upon its own initiative, investigate allegations against a direct entry/non-nurse midwife of incompetence, negligence, substance abuse, misrepresentation, willful breach of confidence, failure to report a birth, or failure to comply with these regulations. Upon completion of the investigation, if the allegations are determined to be founded, the Division of Public Health may propose to suspend or revoke the permit of the direct entry/non-nurse midwife. The Division of Public Health shall notify the direct entry/non-nurse midwife of the proposed sanctions and offer the direct entry/non-nurse midwife the opportunity for a hearing. The direct entry/non-nurse midwife must request a hearing within 30 days of the date of the notification of the proposed sanctions. If the direct entry/non-nurse midwife does not request a hearing, the proposed sanctions shall become final.

**Section IX – Illegal Practice**

Any person who practices as a direct entry/non-nurse midwife, as defined in Section III, in the State of Delaware without a permit issued by the Division of Public Health shall be subject to a fine pursuant to 16 Del. C 107.

**Section X - Severability**

Should any section, sentence, clause, or phase of these Rules and Regulations be legally declared unconstitutional or invalid for any reason, the remainder of these Rules and Regulations shall not be affected.

**DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code,  
Section 9110 (16 Del.C. §9110)

These regulations amend regulations previously adopted on November 16, 1998 and most recently amended July 1, 2001. They are to be adopted in accordance with Chapter 91, Section 9110, Title 16, Delaware Code. They will supersede all previous regulations concerning the Application and Operation of Managed Care Organizations (MCO).

**Summary Of Proposed Regulations****State Of Delaware Rules And Regulations Pertaining To  
The Application And Operation Of Managed Care  
Organizations (MCO).**

The amendments to these regulations establish and define conditions of elements contained within the Patient Bill of Rights (SB181). The definition section of the regulations is expanded to include language from SB181 relating to: balance billing; standing referrals to health care specialists; clinical trials; the addition of pharmacy services as a basic health service; and, the broadening of the definition of emergency medical condition. The regulations have been revised to clarify: referrals to non-network providers and payment for same; minimal standing referral procedure inclusions; and, clinical trial requirements.

**Notice Of Public Hearing**

The Office of Health Facilities Licensing and Certification, Division of Public Health, Department of Health and Social Services will hold public hearings to discuss proposed revisions to Delaware Regulations for Managed Care Organizations (MCOs).

The public hearings will be held November 26, 2001 at 10:00 AM in the third floor conference room, Jesse Cooper Building, Federal and Water Streets, Dover, Delaware and at 10:00 AM on November 29, 2001 in the first (1st) floor conference room, Delaware Fire Service Center, 2307 MacArthur Road, New Castle, DE 19720.

Copies of the proposed regulations are available for review by calling the following location:

Office of Health Facilities Licensing and Certification  
2055 Limestone Road, Suite 200  
Wilmington, DE 19808  
Telephone: (302) 995-8521

Anyone wishing to present his or her oral comments at this hearing should contact Ms. Vanette Seals at (302) 995-

8521 by November 21, 2001. Anyone wishing to submit written comments as a supplement to, or in lieu of oral testimony should submit such comments by December 3, 2001 to:

Dave Walton, Hearing Officer  
 Division of Public Health  
 P.O. Box 637  
 Dover, Delaware 19903-0637

## PART ONE

### SECTION 69.0 LEGAL AUTHORITY

These regulations are adopted under Part VIII, Title 16, Delaware Code, Chapter 91, pursuant to delegation of authority from the Secretary of the Department of Health and Social Services (DHSS) to the Director of the Division of Public Health (DPH).

### SECTION 69.1 DEFINITIONS

69.101 **“Administrator/Chief Executive Officer”**: the individual employed to manage and direct the activities of the MCO.

69.102 **“Appeal”**: a request to reexamine or review an adverse determination made by an MCO that denies, reduces or terminates health care benefits.

69.103 **“Appellant”**: an enrollee (69.119) or other authorized representative (69.104) of the enrollee who may appeal an MCO decision.

69.104 **“Authorized Representative”**: an individual who the appellant willingly acknowledges to represent her/his interests during the appeal process. An MCO may require the appellant to submit written verification of her/his consent to be represented. If an enrollee has been determined by a physician to be incapable of assigning the right of representation, the appeal may be filed by a family member or a legal representative.

69.105 **“Balance Billing”**: a health care provider’s demand that a patient pay a greater amount for a given service than the amount the individual’s insurer, managed care organization, or health service corporation has paid or will pay for the service.

69.106 **“Basic Health Services”**: a range of services, including at least the following:

A. Physician services, including consultant and referral services, by a physician licensed by the State of Delaware.

B. At least three hundred sixty-five (365) days of inpatient hospital services.

C. Medically necessary emergency health services.

D. Initial diagnosis and acute medical treatment (at least one (1) time) and responsibility for making initial behavioral health referrals.

E. Diagnostic laboratory services.

F. Diagnostic and therapeutic radiological services.

G. Preventive health services including at least the provision of physical examinations, papanicolaou (PAP) smears, immunizations, mammograms and childrens’ eye examinations (through age 17) conducted to determine the need for vision correction and performed at a frequency determined to be appropriate medical practice. Other preventive services may be provided by the MCO as contained in the Health Care Contract.

H. Health education services, including education in the appropriate use of health services, and education in the contribution each enrollee can make to the maintenance of the enrollee’s own health. This information shall be understandable and not misleading.

I. Emergency out-of-area and out-of-network coverage.

J. Pharmacy services:

1. Coverage for any outpatient drug prescribed to treat a covered chronic, disabling, or life-threatening illness provided that the drug:

a) has been approved by the Food and Drug Administration (FDA) for at least one indication; and,

b) is recognized for treatment of the indication for which the drug is prescribed in an approved prescription drug reference compendium approved by the Commissioner or a substantially accepted peer reviewed medical literature.

2. Coverage of a drug shall include coverage of medically necessary services associated with the administration of the drug.

3. Coverage does not include:

a) experimental drugs not otherwise approved for the proposed use or indication by the Food and Drug Administration, or

b) any disease, condition, service, or treatment that is excluded from coverage under the policy.

69.107 **“Carrier”**: any entity that provides health insurance in this State. Carrier includes an insurance company, health service corporation, health maintenance organization and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation

69.108 **“Certificate of Authority”**: the authorization by the Department of Health and Social Services to operate the MCO. This certificate shall be deemed to be a license to operate such an Organization.

69.109 **“Certified Managed Care Organization”**: a managed care organization which has been issued a Certificate of Authority under 16 Del. C. and either a Certificate of Authority from the Department of Insurance (DOI) under the relevant provisions of Title 18 or a statement from the DOI that the DOI Certificate of Authority

is not required.

69.110 **“Clinical Trials”**: clinical trials that are approved or funded by use of the following entities:

A. One of the National Institutes of Health (NIH);

B. An NIH Cooperative group of center which is a formal network of facilities that collaborate or research projects and have an established NIH approval peer review program operating within the group;

C. The federal Departments of Veterans’ Affairs or Defense;

D. An institutional review board of an institution in this State that has a multiple project assurance contract approval by the office of protection for the Research Risks of the NIH; and

E. A qualified research entity that meets the criteria for NIH Center Support grant eligibility.

69.408 **111 “Commissioner”**: the Insurance Commissioner of Delaware.

69.409 **112 “Covered Health Services”**: services that are included in the enrollee’s health care contract with the insurer.

69.410 **113 “Covered Person”**: see “Enrollee”.

69.411 **114 “Department”**: the Delaware Department of Health and Social Services.

69.412 **115 “Department of Insurance Certificate of Authority”**: the authorization by the Insurance Commissioner that the MCO has met the relevant provisions of Title 18 of the Delaware Code.

69.413 **116 “Disputable Need”**: an appeal classification for adverse determinations that were made based upon identification of treatment as cosmetic or experimental.

69.414 **117 “Emergency Care”**: health care items or services furnished or required to evaluate or treat an emergency medical condition.

69.415 **118 “Emergency Medical Condition”**: a medical or behavioral condition, the onset of which is sudden, that manifest s ing itself by acute symptoms of sufficient severity (including, but not limited to, severe pain,) such that a prudent layperson, who possessesing an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in:

A. Placing the health of the individual afflicted with such condition (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, or in the case of a behavioral condition, placing the health of such person or others in serious jeopardy;

B. Serious impairment to bodily functions; or

C. Serious impairment or dysfunction of any bodily organ or part; or

D. Serious disfigurement of such person.

69.416 **119 “Enrollee”**: an individual and/or family who has entered into a contractual arrangement, or on whose

behalf a contractual arrangement has been entered into with the MCO, under which the MCO assumes the responsibility to provide to such person(s) coverage for basic health services and such supplemental health services as are enumerated in the Health Care Contract.

69.417 **120 “Geographical area”**: the stated primary geographical area served by an MCO. The primary area served shall be a radius of not more than twenty (20) miles or more than thirty (30) minutes driving time from a primary care office operated or contracted by the MCO.

69.418 **121 “Health Care Contract”**: any agreement between an MCO and an enrollee or group plan which sets forth the services to be supplied to the enrollee in exchange for payments made by the enrollee or group plan.

69.419 **122 “Health Care Professional”**: individuals engaged in the delivery of health services as licensed or certified by the State of Delaware.

69.420 **123 “Health Care Services”**: any services included in the furnishing to any individual of medical or dental care, or hospitalization or incidental to the furnishing of such care or hospitalization, as well as the furnishing to any person of any and all other services for the purpose of preventing, alleviating, curing or healing human illness, injury or physical disability.

69.421 **124 “Independent Health Care Appeals Program”**: a program within the Department of Health and Social Services which establishes a final step in the appeal process and provides for a review by an Independent Utilization Review Organization (69.126).

69.422 **125 “Independent Practice Association” (IPA)**: an arrangement in which health care professionals provide their services through the association in accordance with a mutually accepted compensation arrangement while retaining their private practices.

69.423 **126 “Independent Utilization Review Organization (IURO)”**: an entity that conducts independent external reviews of an MCO’s determinations resulting in a denial, termination, or other limitation of covered health care services.

69.424 **127 “Insurance Department”**: the Delaware Department of Insurance.

69.425 **128 “Intermediary”**: a person authorized to negotiate and execute provider contracts with MCOs on behalf of health care providers or on behalf of a network.

69.426 **129 “Level 1 Trauma Center”**: a regional resource trauma center that has the capability of providing leadership and comprehensive, definitive care for every aspect of injury from prevention through rehabilitation.

69.427 **130 “Level 2 Trauma Center”**: a regional trauma center with the capability to provide initial care for all trauma patients. Most patients would continue to be cared for in this center; there may be some complex cases which would require transfer for the depth of services of a regional Level 1 or specialty center.

69.128 ~~131~~ **“Managed Care Organization (MCO)”**: a public or private organization, organized under the laws of any state, which:

A. Provides or otherwise makes available to enrolled participants health care services, including at least the basic health services defined in 69.106;

B. Is primarily compensated (except for co-payment) for the provision of basic health care services to the enrolled participants on a predetermined periodic rate basis; and

C. Provides physician services directly through physicians who are either employees or partners of such organization, or through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

69.129 ~~132~~ **“Medical Necessity”**: providing of covered health services (69.112) or products that a prudent physician would provide to a patient for the purpose of diagnosing, or treating an illness, injury, disease or its symptoms in a manner that is:

A. In accordance with generally accepted standards of medical practice;

B. Consistent with the symptoms or treatment of the condition; and

C. Not solely for anyone’s convenience.

69.130 ~~133~~ **“Network”**: the participating providers delivering services to enrollees in a managed care plan.

69.131 ~~134~~ **“Office”**: any facility where enrollees receive primary care or other health services.

69.132 ~~135~~ **“Out of Area Coverage”**: health care services provided outside the organization’s geographic service areas with appropriate limitations and guidelines acceptable to the Department and the Commissioner. At a minimum, such coverage must include emergency care.

69.133 ~~136~~ **“Participating Provider”**: a provider who, under a contract with the Organization or with its contractor or subcontractor, has agreed to provide health care services to enrollees with an expectation of receiving payment, other than coinsurance, co-payments or deductibles, directly or indirectly from the Organization.

69.134 ~~137~~ **“Premium”**: payment(s) called for in the health care contract which must be:

A. Paid or arranged for by, or on behalf of, the enrollee before health care services are rendered by the MCO;

B. Paid on a periodic basis without regard to the date on which health services are rendered; and

C. With respect to an individual enrollee are fixed without regard to frequency, extent or cost of health services actually furnished.

69.135 ~~138~~ **“Primary Care Physician (PCP)”**: a participating health care physician chosen by the enrollee and designated by the MCO to supervise, coordinate, or provide initial care or continuing care to an enrollee, and

who may be required by the MCO to initiate a referral for specialty care and maintain supervision of health care services rendered to the enrollee.

69.136 ~~139~~ **“Provider”**: a health care professional or facility.

69.137 ~~140~~ **“Staff Model MCO”**: an MCO in which physicians are employed directly by the MCO or in which the MCO directly operates facilities which provide health care services to enrollees.

69.141 **“Standing Referral”**: a treatment period during which a health care specialist shall be permitted to treat an enrollee without further referral from the enrollee’s primary care physician and during which this specialist may authorize further referrals, procedures, tests, and other medical services which the enrollee’s primary care physician would otherwise be permitted to provide or authorize.

69.138 ~~142~~ **“Supplemental Payment”**: any payment not incorporated in the premium which is required to be paid to the MCO or providers under contract to the MCO by the enrollee.

69.139 ~~143~~ **“Supplementary Health Services”**: any health services other than basic health services which may be provided by a MCO to its enrollees and/or for which the enrollee may contract such as:

A. Long term care;

B. Vision care not included in basic health services;

C. Dental services;

D. Behavioral health services;

E. Long term physical medicine or rehabilitative services;

F. Additional pharmacy services;

G. Infertility services; and

H. Other services, such as occupational therapy, nutritional, home health, homemaker, hospice and family planning services.

69.140 ~~144~~ **“Tertiary Services”**: health care services provided for the intensive treatment of critically ill patients who require extraordinary care on a concentrated basis in special diagnostic categories (e.g. burns, cardiovascular, neonatal, pediatric, oncology, transplants, etc.).

69.141 ~~145~~ **“Utilization Review”**: a set of formal techniques designed to monitor the use of, or evaluate the clinical necessity, efficacy, and/or efficiency of, health care services, procedures or settings. Techniques may include ambulatory review, prospective review, second opinion, certification, concurrent review, case management, discharge planning, or retrospective review.

## PART TWO

### SECTION 69.2 APPLICATION AND CERTIFICATE OF AUTHORITY

69.201 No person shall establish or operate an MCO in

the State of Delaware or enter this State for purposes of enrolling persons in an MCO without obtaining a "Certificate of Authority" under Chapter 91 of Title 16 of the Delaware Code. A foreign corporation shall not be eligible to apply for such certificate unless it has first qualified to do business in the State of Delaware as a foreign corporation pursuant to 8 Del. C., §371.

69.202 Each application for a Certificate of Authority shall be made in writing to the Department of Health and Social Services, shall be certified by an officer or authorized representative of the applicant, shall be in a form prescribed by the Department (~~Appendix A~~) and shall set forth or be accompanied by the following:

A. Organizational Information

1. Brief history and description of current status of applicant, including an organization chart;

2. A copy of the basic organizational documents such as the certificate of incorporation, articles of association, or other appropriate documents and amendments thereto;

3. A list of the names, addresses and official positions of the persons who are to be responsible for the conduct of the affairs of the applicant. Include all members of the Board of Directors or other governing board, the principal officers in the case of a corporation, and the partners or members in the case of a partnership or association; and

4. A list of positions and names for all management personnel.

B. Health Services Delivery

1. A description of the plan of operation of the MCO. Include the following items:

a) a listing of basic health services (69.106) and supplementary health services (69.143) with utilization projections; and

b) the arrangements for delivery of all covered health services (including details as to whether outpatient services are provided directly or through referrals/purchase agreements with outside fee-for-service providers); a description of service sites or facilities (specifying days and hours of operation in the case of outpatient facilities); and all special policies or provisions designed to improve accessibility of services.

2. A sample of the contract, agreement or arrangement between the MCO and providers, including individual physicians, IPAs, group practices, hospitals, laboratory services, nursing homes, home health agencies, and other providers. Any contract, agreement or arrangement which deviates substantially from the sample must be submitted to the OHFLC as executed. In addition, copies of executed contracts or letters of agreement between an IPA or medical group and its member or non-member physicians and other health professionals must be submitted;

3. A list of participating physicians by

specialty and by geographic area as well as a list of other health care personnel providing services. Each physician included on the list must be identified as accepting or not accepting new patients and if there are any limitations on that physician's accepting any enrollees as patients. Staffing ratios shall be prepared for each geographic area in which the MCO proposes to operate. Staffing ratios are the number of physicians or providers by specialty per enrollee;

4. For staff model MCOs, a list of facilities that show the capacity, square footage, and the legal arrangements for use of the facility (leases, subleases, contract of sale, etc.). Provide copies of leases, contracts of sale, or other legal agreements relating to the facilities to be operated by the MCO;

5. All of the applicant's utilization review and utilization management, utilization control, quality assurance mechanisms, policies, manuals, guidelines, and materials;

6. The arrangements for assuring continuity of care for all services provided to enrollees. Include comments on policies related to the primary care physician's responsibilities for coordination and oversight of the enrollee's overall health care and the impact of the medical record keeping system on continuity of care;

7. Procedures utilized by the applicant for determining and ensuring network adequacy;

8. Procedures utilized by the applicant for the credentialing of providers;

9. Procedures for addressing enrollee grievances;

10. Any materials or procedures utilized by the applicant for measuring or assessing the satisfaction of enrollees; and,

11. Procedures for monitoring enrollee access to participating providers including but not limited to:

a) appointment scheduling guidelines;

b) standards for office wait times; and

c) standards for provider response to urgent and emergent issues during and after business hours.

C. Enrollment and Marketing

1. A description of the geographic area to be served, with a map showing service area boundaries, locations of the MCO's participating providers, PCPs, institutional and ambulatory care facilities, and travel times from various points in the service area to the nearest ambulatory and institutional services;

2. Identification of all information to be released to enrollees or prospective enrollees;

3. A description of the proposed marketing techniques and sample copies of any advertising or promotional materials to be used within Delaware or to which Delaware citizens would be exposed;

4. Enrollee handbooks proposed for use. A finalized enrollee handbook shall also be submitted upon

completion; and,

5. Procedures for notifying enrollees of plan changes.

D. Financial

1. Financial information submitted to the Department of Insurance shall be deemed to meet the requirement of Delaware Code, Title 16, Part VIII, Chapter 91, Section 9104(4).

69.203 Within sixty (60) days after receipt of a complete application for issuance of Certificate of Authority, the Department shall determine whether the applicant, with respect to health care services to be furnished, has:

A. Demonstrated the ability to provide such health services in a manner assuring availability, accessibility and continuity of services;

B. Made arrangements for an ongoing health care quality assurance program;

C. The capability to comply with all applicable rules and regulations promulgated by the Department;

D. The capability to provide or arrange for the provision to its enrollees of basic health care services on a prepaid basis through insurance or otherwise, except to the extent of reasonable requirements of co-payments; and,

E. For staff model MCOs, the staff and facilities to directly provide at least half of the outpatient medical care costs of its anticipated enrollees on a prepaid basis.

69.204 The Department shall issue a Certificate of Authority to any person filing an application under this section upon demonstration of compliance with these rules and regulations if:

A. The application contains all the information required under 69.202 of this Part;

B. The Department has not made a negative determination pursuant to 69.203 of this Part; and

C. Payment of the application fees prescribed in 16 Del. C. Chapter 91, has been made.

69.205 If within 60 days after a complete application for a Certificate of Authority has been filed, the Department has not issued such certificate, the Department shall immediately notify the applicant, in writing, of the reasons why such certificate has not been issued and the applicant shall be entitled to request a hearing on the application. The hearing shall be held within 60 days of receipt of written request therefor. Proceedings in regard to such hearing shall be conducted in accordance with provisions for case decisions as set forth in the Administrative Procedures Act, Chapter 101 of Title 29, and in accordance with applicable rules and regulations of the Department (63 Del. Laws, c.382, §1;66 Del. Laws, c. 124, §7.).

69.206 No Certificate of Authority shall be issued without a Certificate of Authority from the DOI under the relevant provisions of Title 18 or a statement from the DOI that the DOI Certificate of Authority is not required.

If a deposit is required, it shall be continuously

maintained in trust. In case of a deficiency of deposit, the Insurance Commissioner shall transmit notice thereof to both the MCO and the Department. In case the deficiency is not cured within the allowed time, the Commissioner shall give notice thereof to the Department and the Department shall revoke its Certificate of Authority to the MCO.

## PART THREE

### SECTION 69.3 GENERAL REQUIREMENTS

69.301 Every MCO operating in this State shall file with the Department every manual concerning: enrollee services rights and responsibilities; policies and procedures relating to health plan coverage; complaint and appeal criteria; and, any other manual upon request. Every filing shall indicate the effective date thereof.

69.302 Annual reports shall be filed with the Department by any MCO on or before June 1 covering the preceding fiscal year. Such reports shall include any changes in the information originally submitted or required under 69.2, 69.404I, 69.405B and 69.705. Financial information submitted to the Department of Insurance shall be deemed to meet the requirement of Delaware Code, Title 16, Part VIII, Chapter 91, Section 9104(4)

#### 69.303 Contract Provisions

A. Every contract between an MCO and a participating provider shall contain the following language:

1. "Provider agrees that in no event, including but not limited to nonpayment by the MCO or intermediary, insolvency of the MCO or intermediary, or breach of this agreement, shall the provider bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against an enrollee or a person (other than the MCO or intermediary) acting on behalf of the enrollee for services provided pursuant to this agreement. This agreement does not prohibit the provider from collecting coinsurance, deductibles or co-payments, as specifically provided in the evidence of coverage, or fees for uncovered services delivered on a fee-for-service basis to enrollees."

2. "In the event of an MCO or intermediary insolvency or other cessation of operations, covered services to enrollees will continue through the period for which a premium has been paid to the MCO on behalf of the enrollee or until the enrollee's discharge from an inpatient facility, whichever time is greater. Covered benefits to enrollees confined in an inpatient facility on the date of insolvency or other cessation of operations will continue until their continued confinement in an inpatient facility is no longer medically necessary."

3. The contract provisions that satisfy the requirements of Subsections 1. and 2. above shall be construed in favor of the enrollee, shall survive the termination of the contract regardless of the reason for

termination, including the insolvency of the MCO, and shall supersede any oral or written contrary agreement between a provider and an enrollee or the representative of an enrollee if the contrary agreement is inconsistent with the hold harmless and continuation of covered services provisions required by Subsections 1. and 2. above.

4. Every contract between an MCO and a participating provider shall state that in no event shall a participating provider collect or attempt to collect from an enrollee any money owed to the provider by the MCO.

**69.304 Amendments or Revisions of Contracts**

Any significant amendment to or revision relating to the text or subtext of an approved provider contract shall be submitted to and approved by the Department prior to the execution of an amended or revised contract with the providers of an MCO.

**69.305** The MCO shall establish a policy governing termination of providers. The policy shall include at least:

A. Written notification to each enrollee six (6) weeks prior to the termination or withdrawal from the MCO's provider network of an enrollee's primary care physician except in cases where termination was due to unsafe health care practice; and,

B. Except in cases where termination was due to unsafe health care practices that compromise the health or safety of enrollees, assurance of continued coverage of services at the contract price by a terminated provider for up to 120 calendar days in cases where it is medically necessary for the enrollee to continue treatment with the terminated provider. In cases of the pregnancy of an enrollee, medical necessity shall be deemed to have been demonstrated and coverage shall continue to completion of postpartum care.

**69.306** The Medical Director and physicians designated to act on his behalf shall be Delaware licensed physicians.

**69.307 Prohibited Practices**

A. No MCO or representative may cause or permit the use of advertising or solicitation which is untrue or misleading.

B. No MCO may cancel or refuse to renew the enrollment of an enrollee solely on the basis of her/his health. This does not prevent the MCO from canceling the enrollment of an enrollee if misstatements of her/his health were made at the time of enrollment, or prevent the MCO from canceling or refusing to renew enrollment for reasons other than an enrollee's health including without limitation, nonpayment of premiums or fraud by the enrollee.

C. An MCO contract shall contain no provision or nondisclosure clause prohibiting physicians or other health care providers from giving patients information regarding diagnoses, prognoses and treatment options.

D. An MCO shall not deny, exclude or limit benefits for a covered individual for losses due to a preexisting condition where such were incurred more than twelve (12) months following the date of enrollment in such

plan or, if earlier, the first day of the waiting period for such enrollment.

E. An MCO shall not impose any preexisting condition exclusion relating to pregnancy or in the case of a child who is adopted or placed for adoption before attaining eighteen (18) years of age and who, as of the last day of the 30-day period beginning on the date of the adoption or placement for adoption, is covered under creditable coverage. The previous sentence shall not apply to coverage before the date of such adoption or placement for adoption.

F. An MCO shall not offer incentives to a provider to provide less than medically necessary services to an enrollee.

G. An MCO shall not penalize a provider because the provider, in good faith, reports to state authorities any act or practice by the MCO that jeopardizes patient health or welfare.

H. A contract between an MCO and a provider shall not contain definitions or other provisions that conflict with the definitions or provisions contained in these regulations.

**69.308** An MCO shall establish a mechanism by which the participating provider will be notified on an ongoing basis of the specific covered health services for which the provider will be responsible, including any limitations or conditions on services.

**69.309** An MCO shall notify participating providers of the providers' responsibilities with respect to the MCO's applicable administrative policies and programs, including but not limited to payment terms, utilization review, quality assessment and improvement programs, credentialing, grievance procedures, data reporting requirements, confidentiality requirements and any applicable federal or state programs.

**69.310** The rights and responsibilities under a contract between an MCO and a participating provider shall not be assigned or delegated by the provider without the prior written consent of the MCO.

**69.311** An MCO is responsible for ensuring that a participating provider furnishes covered benefits to all enrollees without regard to the enrollee's enrollment in the plan as a private purchaser of the plan or as a participant in publicly financed programs of health care services. This requirement does not apply to circumstances when the provider should not render services due to limitations arising from lack of training, experience, skill or licensing restrictions.

**69.312** An MCO shall notify the participating providers of their obligations, if any, to collect applicable coinsurance, co-payments or deductibles from enrollees pursuant to the evidence of coverage, or of the providers' obligations, if any, to notify enrollees of their personal financial obligations for non-covered services.

**69.313** An MCO shall establish procedures for

resolution of administrative, payment or other disputes between providers and the MCO.

#### 69.314 Notice of Changes in MCO Operations

The MCO shall notify the Department in writing, on an ongoing basis, of any substantial changes in organization, bylaws, governing board, provider contracts or agreements, marketing materials, grievance procedures, enrollee handbooks, utilization management program, and any change of inpatient acute care hospitals. The Department shall be notified on at least a quarterly basis of changes in the provider network.

#### 69.315 Changes in Ownership Interests

Certificates of Authority shall not be assignable or transferable in whole or in part. Accordingly, the holder of record of any Certificate of Authority to operate in Delaware, as a condition thereof, shall comply with all of the following requirements regarding changes in ownership interests. For the purposes of this section, changes in ownership interests shall refer to changes in the ownership of the holder of record of any Certificate of Authority and/or changes in ownership of any individual, corporation or other entity which, through the ownership of voting securities, by contract or by any other means, has the authority to or does in fact direct or cause the direction of the management and/or the policies of the MCO which is the subject of the Certificate of Authority at issue.

#### 69.316 Examinations

A. The Department may make examinations concerning the quality of health care services of any MCO. The Department may make such examination as it deems necessary for the protection of the interests of the enrollees of the MCO, but not less frequently than every three (3) years;

B. Every MCO shall submit its books and records relating to health care services to such examinations. In the course of such examinations, the Department may administer oaths to and examine the officers and agents of the MCO and of any health care providers with which it has contracts, agreements or other arrangements. The MCO shall require a provider to make health records available to the Department employees involved in assessing the quality of care or investigating the grievances or complaints of enrollees, and to comply with the applicable laws related to the confidentiality of medical or health records; and,

C. The reasonable expenses of examinations under this section shall be assessed against the MCO being examined and remitted to the Department.

#### 69.317 Violations/Penalties

A. The Department may revoke or suspend a Certificate of Authority issued to an MCO pursuant to 16 Del. C. Chapter 91, or may place the MCO on probation for such period as it determines, or may publicly censure an MCO if it determines, after a hearing, that:

1. The MCO is operating in a manner which

deviates substantially, in a manner detrimental to its enrollees, from the plan of operation described by it in securing its Certificate of Authority;

2. The MCO does not have in effect arrangements to provide the quantity and quality of health care services required by its enrollees;

3. The MCO is no longer in compliance with the requirements of 16 Del. C. §9104(b); or,

4. The continued operation of the MCO would be detrimental to the health or well being of its enrollees needing services.

B. The Department may issue an order directing a health carrier or a representative of a health carrier to cease and desist from engaging in any act or practice in violation of the provisions of this act. If the Secretary elects not to issue a cease and desist order, or in the event of noncompliance with a cease and desist order, the Secretary may institute a proceeding to obtain injunctive relief.

1. Within twenty (20) calendar days after service of the cease and desist order, the health carrier may request a hearing on the question of whether acts or practices in violation of this act have occurred. This appeal shall not stay the cease and desist order.

C. Proceedings in regard to any hearing held pursuant to this section shall be conducted in accordance with provisions for case decisions as set forth in the Administrative Procedures Act, 29 Del. C. §101, and any applicable rules and regulations of the Department. Any decision rendered following a hearing shall set forth the findings of fact and conclusions of the Department as to any violations of this Chapter, and shall also set forth the reasons for the Department's choice of any sanction to be imposed. The Department's choice of sanction shall not be disturbed upon appeal, except for abuse of discretion.

D. Suspension of a Certificate of Authority pursuant to this section shall not prevent the MCO from continuing to serve all its enrollees as of the date the Department issues a decision imposing suspension, nor shall it preclude thereafter adding as enrollees newborn children or other newly acquired dependents of existing enrollees. Unless otherwise determined by the Department and set forth in its decision, a suspension shall, during the period when it is in effect, preclude all other new enrollments and also all advertising or solicitation on behalf of the MCO other than communication, approved by the Department, which are intended to give information as to the effect of the suspension.

E. In the event that the Department decides to revoke the Certificate of Authority of an MCO the decision so providing shall specify the time and manner in which its business shall be concluded. If the Department determines it is appropriate, it may refer the matter of conservation or liquidation to the Insurance Commissioner, who shall then proceed in accordance with 18 Del. C., Chapter 59. In any

case, after the Department has issued a decision revoking a Certificate of Authority, unless stayed in connection with an appeal, the MCO shall not conduct any further business except as expressly permitted in the Department's decision and it shall engage only in such activities as are directed by the Department or are required to assist its enrollees in securing continued health care coverage.

F. The Department may require a corrective action plan from an MCO when the Department determines that the MCO is not in compliance with any of the regulations contained herein.

G. Civil Monetary Penalty (CMP)

1. A carrier that violates any provision of this act shall be liable to a civil penalty of not less than two hundred fifty dollars (\$250.00) and not greater than ten thousand dollars (\$10,000.00) for each day that the carrier is in violation of the act.

2. The Department shall give ten (10) calendar days written notice to the health carrier of its intent to levy such a penalty.

3. The health carrier may, within such 10-day period, give written notice of their desire to have a hearing. Proceedings in regard to such hearing shall be conducted in accordance with provisions for case decisions as set forth in the Administrative Procedures Act, Title 29, Chapter 101 of the Delaware Code and in accordance with applicable rules and regulations of the Department.

69.318 Fees

Every MCO shall pay ~~the following~~ fees in accordance with 16 Del. C., Ch. 91, Sec. 9111. ÷

~~A. For filing an application for a Certificate of Authority — three hundred and seventy-five dollars (\$375.00).~~

~~B. For filing an annual report — two hundred and fifty dollars (\$250.00).~~

69.319 Confidentiality of Health Information

Any data or information pertaining to the diagnosis, treatment or health of any enrollee or applicant obtained from such person or from any health care provider by any MCO shall be held in confidence and shall not be disclosed to any person except upon the express consent of the enrollee or applicant, or his physician, or pursuant to statute or court order for the production of evidence or the discovery thereof, or in the event of claim or litigation between such person and the MCO wherein such data or information is pertinent or as may be required by the Department in the course of their examinations in accordance with 69.316. The communication of such data or information from a health care provider to a MCO shall not prevent such data or information from being deemed confidential for purposes of the Delaware Uniform Rules of Evidence.

69.320 The MCO is responsible for meeting each requirement of these regulations. If the MCO chooses to utilize contract support or to contract functions under these

regulations, the MCO retains responsibility for ensuring that the requirements of this regulation are met.

69.321 Specific standards may be waived by the Department provided that each of the following conditions are met:

A. Strict enforcement of the standard would result in unreasonable hardship on the MCO.

B. A waiver must not adversely affect the health, safety, welfare, or rights of any enrollee of the MCO.

C. The request for a waiver must be made to the Department, in writing, by the MCO with substantial detail justifying the request.

D. Prior to filing a request for a waiver, the MCO shall provide written notice of the request to each enrollee. Prior to filing a request for a waiver, the MCO shall also provide written notice of the request to the Department. The notice shall state that the enrollee has the right to object to the waiver request in writing to the Department.

Upon filing the request for a waiver, the MCO shall submit to the Department a copy of the notice and a sworn affidavit outlining the method by which the requirement was met. The MCO shall maintain proof of the method by which the requirement was met by the MCO for the duration of the waiver and make such proof available upon the request of the Department.

E. A waiver granted by the Department is not transferable to another MCO in the event of a change of ownership.

F. A waiver shall be granted for the term of the license.

## PART FOUR

### SECTION 69.4 QUALITY ASSURANCE AND OPERATIONS

#### 69.401 Health Care Professional Credentialing

##### A. General Responsibilities, an MCO shall:

1. Establish written policies and procedures for credentialing verification of all health care professionals with whom the MCO contracts and apply these standards consistently;

2. Verify the credentials of a health care professional before entering into a contract with that health care professional. The medical director of the MCO or other designated health care professional shall have responsibility for, and shall participate in, health care professional credentialing verification;

3. Establish a credentialing verification committee consisting of licensed physicians and other health care professionals to review credentialing verification information and supporting documents and make decisions regarding credentialing verification;

4. Make available for review by the applying health care professional upon written request all application

and credentialing verification policies and procedures;

5. Retain all records and documents relating to a health care professionals credentialing verification process for not less than four (4) years; and,

6. Keep confidential all information obtained in the credentialing verification process, except as otherwise provided by law.

B. Nothing in these regulations shall be construed to require an MCO to select a provider as a participating provider solely because the provider meets the MCO's credentialing verification standards, or to prevent the MCO from utilizing separate or additional criteria in selecting the health care professionals with whom it contracts.

C. Selection standards for participating providers shall be developed for primary care professionals and each health care professional discipline. The standards shall be used in determining the selection of health care professionals by the MCO, its intermediaries and any provider networks with which it contracts. The standards shall meet the requirements of 69.401 A. and 69.401 D. Selection criteria shall not be established in a manner:

1. That would allow an MCO to avoid high-risk populations by excluding providers because they are located in geographic areas that contain populations or providers presenting a risk of higher than average claims, losses or health services utilization; or,

2. That would exclude providers because they treat or specialize in treating populations presenting a risk of higher than average claims, losses or health services utilization.

D. Qualifications of primary care providers

1. Physicians qualified to function as primary care providers include: licensed physicians who have successfully completed a residency program accredited by the Accreditation Council for Graduate Medical Education or approved by the American Osteopathic Association in family practice, internal medicine, general practice, pediatrics, obstetrics-gynecology or who are diplomats of one of the above certifying boards approved by the American Board of Medical Specialties or one of the certifying boards of the American Osteopathic Association.

E. Verification Responsibilities, an MCO shall:

1. Obtain primary verification of at least the following information about the applicant:

a) current license, certification, or registration to render health care in Delaware and history of same;

b) current level of professional liability coverage, if applicable;

c) status of hospital privileges, if applicable;

d) specialty board certification status, if applicable; and,

e) current Drug Enforcement Agency

(DEA) registration certificate, if applicable.

2. Obtain, subject to either primary or secondary verification:

a) the health care professional's record from the National Practitioner Data Bank; and,

b) the health care professional's malpractice history.

3. Not less than every three (3) years obtain primary verification of a participating health care professional's:

a) current license or certification to render health care in Delaware;

b) current level of professional liability coverage, if applicable;

c) status of hospital privileges, if applicable;

d) current DEA registration certificate, if applicable; and,

e) specialty board certification status, if applicable.

4. Require all participating providers to notify the MCO of changes in the status of any of the items listed in this section at any time and identify for participating providers the individual to whom they should report changes in the status of an item listed in this section.

F. Health Care Professionals Right to Review Credentialing Verification Information

1. An MCO shall provide a health care professional the opportunity to review and correct information submitted in support of that health care professional's credentialing verification application as set forth below.

a) each health care professional who is subject to the credentialing verification process shall have the right to review all information, including the source of that information, obtained by the MCO to satisfy the requirements of this section during the MCO's credentialing process.

b) an MCO shall notify a health care professional of any information obtained during the MCO's credentialing verification process that does not meet the MCO's credentialing verification standards or that varies substantially from the information provided to the MCO by the health care professional, except that the MCO shall not be required to reveal the source of information if the information is not obtained to meet this requirement, or if disclosure is prohibited by law.

c) a health care professional shall have the right to correct any erroneous information. The MCO shall have a formal process by which a health care professional may submit supplemental or corrected information to the MCO's credentialing verification committee and request a reconsideration of the health professional's credentialing verification application if the

health care professional feels that the MCO's credentialing verification committee has received information that is incorrect or misleading. Supplemental information shall be subject to confirmation by the MCO.

69.402 Provider Network Adequacy

A. Primary, Specialty and Ancillary Providers

1. The MCO shall maintain an adequate network of primary care providers, specialists, and other ancillary health care resources to serve the enrolled population at all times. The MCO shall develop and submit annually to the Department policies and procedures for measuring and assessing the adequacy of the network. At a minimum, the network of providers shall include:

a) a sufficient number of licensed primary care providers under contract with the MCO to provide basic health care services. All enrollees must have immediate telephone access seven (7) days a week, twenty-four (24) hours a day, to their primary care provider or his/her authorized on-call back-up provider;

b) a sufficient number of licensed medical specialists available to MCO enrollees to provide medically necessary specialty care. The MCO must have a policy assuring reasonable access to frequently used specialists within each service area; and,

c) a sufficient number of other health professional staff including but not limited to licensed nurses and other professionals available to MCO enrollees to provide basic health care services. ~~The MCO shall cover nonparticipating providers at no extra cost to the enrollee if a plan has an insufficient number of providers within reasonable geographic distances and appointment times to meet the medical needs of the enrollee. If a plan has an insufficient number of providers within reasonable geographic distances and appointment times to meet the medical needs of the enrollee, the MCO shall cover nonparticipating providers, and shall prohibit balance billing.~~

2. The MCO shall allow referral to a non-network provider, upon the request of a network provider, when medically necessary covered services are not available through network providers, or the network providers are not available within a reasonable period of time. The MCO shall make acceptable service arrangements with the provider and enrollee, and shall prohibit balance billing.

B. Facility and Ancillary Health Care Services

1. The MCO shall maintain contracts or other arrangements acceptable to the Department with institutional providers which have the capability to meet the medical needs of enrollees and are geographically accessible. The network of providers shall include:

a) at least one licensed acute care hospital including at least licensed medical-surgical, pediatric, obstetrical, and critical care services in any service area no greater than thirty (30) miles or forty (40) minutes

driving time from ninety percent (90%) of enrollees within the service area.

b) surgical facilities including hospitals licensed ambulatory surgical facilities, and/or physicians surgical practices. Such services shall be available in each service area no greater than thirty (30) miles or forty (40) minutes driving time from ninety percent (90%) of enrollees within the service area.

c) the MCO shall have a policy assuring access to the following specialized services, as determined to be medically necessary:

(1) at least one hospital providing regional perinatal services;

(2) a hospital offering pediatric intensive care services;

(3) a hospital offering neonatal intensive care services;

(4) therapeutic radiation provider;

(5) magnetic resonance imaging center;

(6) diagnostic radiology provider, including X-ray, ultrasound, and CAT scan;

(7) emergency mental health service;

(8) diagnostic cardiac catheterization services in a hospital;

(9) specialty pediatric outpatient centers for conditions including sickle cell, hemophilia, cleft lip and palate, and congenital anomalies;

(10) clinical Laboratory certified under CLIA; and,

(11) certified renal dialysis provider.

Such services shall be reasonably accessible. Evidence indicating such services shall include contracts or other agreements acceptable to the Department.

2. If offered by the plan, the MCO shall have a policy assuring access to the following specialized services, as determined to be medically necessary:

a) a licensed long term care facility with skilled nursing beds;

b) residential substance abuse treatment center;

c) inpatient psychiatric services for adults and children;

d) short term care facility for involuntary psychiatric admissions;

e) outpatient therapy providers for mental health and substance abuse conditions;

f) home health agency licensed by the Department;

g) hospice program licensed by the Department; and,

h) pharmacy services.

Such services shall be reasonably accessible. Evidence indicating such services shall include

contracts or other agreements acceptable to the Department.

3. The MCO shall make acceptable service arrangements with the provider and enrollee, ~~at no extra cost to the enrollee~~ and shall prohibit balance billing, if the appropriate level of service is not available within the geographical service area. These services will not be limited to the State of Delaware. These services could include but are not limited to tertiary services, burn units and transplant services.

#### C. Emergency and Urgent Care Services

1. The MCO shall establish written policies and procedures governing the provision of emergency and urgent care which shall be distributed to each enrollee at the time of initial enrollment and after any revisions are made. These policies shall be easily understood by a layperson.

2. When emergency care services are performed by non-network providers, the MCO shall make acceptable service arrangements with the provider and enrollee, and shall prohibit balance billing. In those cases where the MCO and the provider cannot agree upon the appropriate charge, the provider may appeal to the Commissioner for arbitration.

3. Enrollees shall have access to emergency care (69.117) twenty-four (24) hours per day, seven (7) days per week. The MCO shall cover emergency care necessary to screen and stabilize an enrollee and shall not require prior authorization of such services if a prudent lay person acting reasonably would have believed that an emergency medical condition (69.118) existed.

4. Emergency and urgent care services shall include but are not limited to:

a) medical and psychiatric care, which shall be available twenty-four (24) hours a day, seven (7) days a week;

b) trauma services at any designated Level I or II trauma center as medically necessary. Such coverage shall continue at least until the enrollee is medically stable, no longer requires critical care, and can be safely transferred to another facility, in the judgment of the attending physician. If the MCO requests transfer to a hospital participating in the MCO network, the patient must be stabilized and the transfer effected in accordance with federal regulations at 42 CFR 489.20 and 42 CFR 489.24;

c) out of area health care for urgent or emergency conditions where the enrollee cannot reasonably access in-network services;

d) hospital services for emergency care; and,

e) upon arrival in a hospital, a medical screening examination, as required under federal law, as necessary to determine whether an emergency medical condition exists.

5. When an enrollee has received emergency care from a non-network provider and is stabilized, the

enrollee or the provider must request approval from the MCO for continued post-stabilization care by a non-network provider. The MCO is required to approve or disapprove coverage of post-stabilization care as requested by a treating physician or provider within the time appropriate to the circumstances relating to the delivery of services and the condition of the enrollee, but in no case to exceed one hour from the time of the request.

D. All enrollees shall be provided with an up-to-date and comprehensive list of the provider network upon enrollment and upon request. Updates due to provider changes must be provided at least quarterly.

#### 69.403 Utilization Management

##### A. Utilization Management Functions

1. The MCO shall establish and implement a comprehensive utilization management program to monitor access to and appropriate utilization of health care and services. The program shall be under the direction of a designated physician and shall be based on a written plan that is reviewed at least annually. The plan shall identify at least:

a) scope of utilization management activities;

b) procedures to evaluate clinical necessity, access, appropriateness, and efficiency of services;

c) mechanisms to detect under utilization;

d) clinical review criteria and protocols used in decision-making;

e) mechanisms to ensure consistent application of review criteria and uniform decisions;

f) system for providers and enrollees to appeal utilization management determinations in accordance with the procedures set forth; and,

g) a mechanism to evaluate enrollee and provider satisfaction with the complaint and appeals systems set forth. Such evaluation shall be coordinated with the performance monitoring activities conducted pursuant to the continuous quality improvement program set forth.

2. Utilization management determinations shall be based on written clinical criteria and protocols reviewed and approved by practicing physicians and other licensed health care providers within the network. These criteria and protocols shall be periodically reviewed and updated, and shall, with the exception of internal or proprietary quantitative thresholds for utilization management, be readily available, upon request, to affected providers and enrollees. All materials including internal or proprietary materials for utilization management shall be available to the Department upon request.

3. Compensation to persons providing utilization review services for an MCO shall not contain incentives, direct or indirect, for these persons to make

inappropriate review decisions. Compensation to any such persons may not be based, directly or indirectly, on the quantity or type of adverse determinations rendered.

**B. Utilization Management Staff Availability**

1. At a minimum, appropriately qualified staff shall be immediately available by telephone, during routine provider work hours, to render utilization management determinations for providers.

2. The MCO shall provide enrollees with a toll free telephone number by which to contact customer service staff on at least a five (5) day, forty (40) hours a week basis.

3. The MCO shall supply providers with a toll free telephone number by which to contact utilization management staff on at least a five (5) day, forty (40) hours a week basis.

4. The MCO must have policies and procedures addressing response to inquiries concerning emergency or urgent care when a PCP or her/his authorized on call back up provider is unavailable.

**C. Utilization Management Determinations**

1. All determinations to authorize services shall be rendered by appropriately qualified staff.

2. All determinations to deny or limit an admission, service, procedure or extension of stay shall be rendered by a physician. The physician shall be under the clinical direction of the medical director responsible for medical services provided to the MCO's Delaware enrollees. Such determinations shall be made in accordance with clinical and medical criteria and standards and shall take into account the individualized needs of the enrollee for whom the service, admission, procedure is requested.

3. All determinations shall be made on a timely basis as required by the exigencies of the situation.

4. An MCO may not retroactively deny reimbursement for a covered service provided to an enrollee by a provider who relied upon the written or verbal authorization of the MCO or its agents prior to providing the service to the enrollee, except in cases where the MCO can show that there was material misrepresentation, fraud or the patient was found not to have coverage.

5. An enrollee must receive upon request a written notice of all determinations to deny coverage or authorization for services required and the basis for the denial.

**69.404 Appeal Procedure**

**A. Scope of Appeal**

The following appeal procedure shall be utilized when the subject of the appeal is based upon medical necessity (69.132) or disputable need (69.116). For all other appeals, the MCO carrier shall develop and implement written policies and procedures that require a review process and a written response to the appellant.

**B. Appeal Procedure**

**1. Information Disclosure**

An MCO carrier shall provide enrollees with a written explanation of the appeal process upon enrollment, annually, upon request and each time the appeal process is substantially changed. An MCO carrier shall also provide participating providers with a written explanation of the appeal process, upon initial participation with the MCO's carrier network, upon request and each time the appeal process is substantially changed.

**2. Stages of Appeal Process**

a) ~~an~~ MCO carrier shall establish an appeal process for appellants for review of coverage determinations based on medical necessity (69.132) or disputable need (69.116). The appeal process shall consist of the following stages: an internal review by the MCO carrier ("Stage 1 Appeal"), a second subsequent internal review by the MCO carrier ("Stage 2 Appeal") and an external review ("Stage 3 Appeal").

b) each stage of the appeal process shall provide for expedited review that shall not exceed seventy-two (72) hours.

(1) in the event that the subject of the appeal concerns an imminent, emergent, or serious threat to the appellant each stage (1, 2, and 3) of the appeal process may take seventy-two (72) hours each.

(2) in the event that the subject of the appeal concerns an emergency medical condition (69.118), both stages of internal review (stage 1 and 2) must be concluded within a total of seventy-two (72) hours. Stage 3 must be completed within an additional seventy-two (72) hours.

**3. Petition for External Review form**

All MCOs carriers shall complete a DHSS approved form and forward it to the Department to initiate the Independent Health Care Appeals Program.

**4. Waiver of Internal Review Process**

In the event that the MCO carrier fails to comply with any of the deadlines for completion of the Stage 1 or 2 appeals, or in the event that the MCO carrier for any reason expressly waives its rights to an internal review of any appeal, then the appellant shall be relieved of her/his obligation to complete the MCO carrier internal review process, and at the appellant's option, may proceed directly to the Stage 3 appeal process.

**5. Appellant Rights.**

a) ~~an~~ MCO carrier shall not disenroll, terminate or in any way penalize an enrollee who exercises the right to appeal solely on the basis of filing the appeal.

**b) MCO Carrier Assistance**

(+) i. upon the initiation of an appeal, ~~an~~ MCO carrier shall notify an appellant of the right to have a staff member appointed to assist her/him with understanding the appeal process. Such assistance shall be available during during the appeal process.

(2) ii. an appellant may request such assistance at any stage of the appeal process.

(3) iii. upon such request, an MCO carrier shall appoint a member of its staff who has had no prior direct involvement in the case to assist the appellant.

c) after an adverse determination, an appellant shall have the right to discuss a coverage determination with the medical director, or physician designee, of the MCO carrier who made the coverage determination.

#### 6. MCO Carrier Records

An MCO carrier shall maintain written or electronic records to document all appeals received. For each appeal an MCO carrier shall maintain, at a minimum, the following information:

- a) a general description of the reason for the appeal;
- b) date received;
- c) date of each review;
- d) resolution at each stage of appeal;
- e) date of resolution at each stage; and,
- f) name and plan identification number of the appellant for whom the appeal was filed.

#### 7. Reporting

An MCO carrier shall submit the following information to the Department within thirty (30) days after the close of each calendar quarter:

- a) the total number appeals (69.102) filed.
- b) the number of Stage 1 appeals. This shall include only those appeals based upon medical necessity (69.132) and/or disputable need (69.116).
- c) the number of Stage 1 appeals upheld.
- d) the number of Stage 1 appeals overturned.
- e) the number of Stage 2 appeals. This shall include only those appeals based upon medical necessity (69.132) and/or disputable need (69.116).
- f) the number of Stage 2 appeals upheld.
- g) the number of Stage 2 appeals overturned.
- h) the number of petitions made to the Independent Health Care Appeals Program.

#### C. Stage 1 Appeal Procedure

##### 1. Procedure

An MCO carrier shall establish and maintain an internal appeal procedure in which an appellant, who is dissatisfied with a coverage determination by the MCO carrier, that is based on medical necessity or disputable need, shall have the opportunity to appeal the determination. This appeal is made to the MCO carrier who will then assign the medical director and/or a physician designee, who has had no prior direct involvement with the appellant's case, to conduct the review.

##### 2. Timeframes

A Stage 1 appeal shall be concluded as soon as possible in accordance with the medical exigencies of the case but no more than five (5) business days after receipt of the appeal. In no event shall appeals that involve an imminent, emergent, or serious threat to the health of the appellant exceed seventy-two (72) hours.

##### 3. Notice of Determination

An MCO carrier shall provide notice of the Stage 1 appeal determination to the appellant within five business days of receipt of the appeal. If such notice is provided verbally to the appellant, the MCO carrier shall provide written notice of the determination to the appellant within five (5) business days of the verbal notice. In the event that the adverse determination is upheld, the written notice shall include the reason for the determination, an explanation of the appellant's right to proceed to a Stage 2 appeal and a review of the entire appeals process. This information shall include specific contact information (address and phone number) that is appropriate for each appeal stage.

##### D. Stage 2 Appeal Procedure

1. An MCO carrier shall establish and maintain an internal appeal procedure in which an appellant who is dissatisfied with a Stage 1 appeal determination by an MCO carrier shall have the opportunity to appeal the determination to the MCO carrier. A panel, selected by the MCO carrier, shall consist of at least two (2) physicians and/or other health care professionals having no direct involvement with the appellant's case prior to this review, one of who should be in the same or similar specialty that typically manages the care under review. If the same or similar physician/health care professional is not a member of the panel, such physician/health care professional must consult on the health care service at issue and report such consultation in writing to the panel for consideration.

##### 2. Written Notice of Meeting

An MCO carrier shall acknowledge receipt of all Stage 2 appeals in writing to the appellant. This acknowledgement shall include the place, date and time of the Stage 2 appeal meeting and shall give the appellant at least fifteen (15) calendar days notice of the appeal meeting. The appellant may request a change in the meeting schedule to facilitate attendance.

##### 3. Appeal Meeting

The MCO carrier shall hold the Stage 2 appeal meeting during regular business hours at a location reasonably accessible to the appellant. If a face-to-face meeting is not practical for geographic reasons, the MCO carrier shall offer the appellant the opportunity to communicate with the review panel, at the MCO's carrier's expense, by conference call, video-conferencing, or other appropriate technology. The MCO carrier shall not unreasonably deny a request for postponement of the meeting made by an appellant. The appellant's right to a fair

review shall not be conditional on the appellant's appearance at the Stage 2 appeal meeting.

4. Appellant Rights

An appellant has the right to:

- a) attend the Stage 2 appeal;
- b) present his or her case to the review panel;
- c) submit supporting material both before and at the appeal meeting;
- d) ask questions of any representative of the MCO carrier participating on the panel;
- e) be accompanied and supported by a person of her/his choice in addition to her/his representative; and,
- f) review all relevant information that is not confidential, proprietary or privileged.

5. Timeframes

A Stage 2 appeal shall be concluded as soon as possible in accordance with the medical exigencies of the case but no more than thirty (30) calendar days after receipt of the request for the Stage 2 appeal. In no event shall a Stage 2 appeal involving an imminent, emergent or serious threat to the health of the appellant exceed seventy-two (72) hours.

6. Extensions

The MCO carrier may extend the Stage 2 appeal for up to an additional thirty (30) calendar days for reasonable cause by submitting a written explanation for the delay to the Department within the original thirty (30) calendar day review period. An MCO carrier honoring an appellant's request for extension for necessity or convenience shall be deemed a reasonable cause. In no event may an MCO carrier extend the review period for an expedited appeal.

7. Written Notice of Determination

An MCO carrier shall provide written notice of the Stage 2 appeal determination to the appellant within five (5) business days of such determination. In the event of an adverse determination, such notice shall include:

- a) the qualifications of the members of the Stage 2 appeal panel;
- b) a statement of the panel's understanding of the nature of the appeal and all pertinent facts;
- c) the rationale for the review panel's determination;
- d) reference to evidence or documentation considered by the panel in making that determination;
- e) instructions for requesting a written statement of the clinical rationale, including the clinical review criteria used to make the determination; and,
- f) the appellant's right to proceed to a Stage 3 appeal.

E. Independent Health Care Appeals Program (External Appeal Process/Stage 3)

1. Upon receipt of an adverse determination at Stage 2, any appellant who is dissatisfied with the results, shall have the opportunity to pursue her/his appeal before an independent utilization review organization.

2. The appellant must file the request for appeal with the MCO carrier within sixty (60) calendar days of receipt of the adverse determination from the internal review process.

3. Upon receipt of a request for external review, the MCO carrier shall fax the Petition for External Review form as soon as possible but within no more than three (3) business days to the Department and shall send a hard copy of the request to the Department by mail.

4. The Department shall assign an approved IURO (69.126) to conduct the external review and shall notify the MCO carrier.

5. The assigned IURO shall, within five (5) calendar days of assignment, notify the appellant in writing by certified or registered mail, that the appeal has been accepted for external review. The notice shall include a provision stating that the appellant may submit additional written information and supporting documentation that the IURO shall consider when conducting the external review. Appellant shall submit such written documentation to the IURO within seven (7) calendar days following the date of receipt of the notice.

a) upon receipt of any information submitted by the appellant, the assigned IURO shall as soon as possible but within no greater than two (2) business days, forward the information to the MCO carrier.

b) the IURO must accept additional documentation submitted by the MCO carrier in response to additional written information and supporting documentation from the appellant.

6. Within seven (7) business days after the receipt of the notification required in 69.404.E.4, the MCO carrier shall provide to the assigned IURO, the documents and any information considered in making the internal appeal determination.

a) if the MCO carrier fails to submit documentation and information or fails to participate within the time specified, the assigned IURO may terminate the external review and make a decision, with the approval of the Department, to reverse the internal appeal determination.

7. The external review may be terminated if the MCO carrier decides to reverse its adverse determination and provide coverage or payment for the health care service that is the subject of the appeal.

a) immediately upon making the decision to reverse its adverse determination, the MCO carrier shall notify the appellant, the assigned IURO, and the Department in writing of its decision.

b) the assigned IURO shall terminate the external review upon receipt of the written notice from the MCO carrier.

8. Within forty-five (45) calendar days after the receipt of the request for external review, the assigned IURO shall provide written notice of its decision to uphold or reverse the adverse determination to:

- a) the appellant;
- b) the MCO carrier; and,
- c) the Department.

9. The IURO shall include the following information in the notice sent pursuant to 69.404.E.8:

- a) the qualifications of the members of the review panel;
  - b) a general description of the reason for the request for external review;
  - c) the date the IURO received the assignment from the Department to conduct the external review;
  - d) the date(s) the external review was conducted;
  - e) the date of its decision;
  - f) the principal reason(s) for its decision;
- and,
- g) references to the evidence or documentation, including practice guidelines and clinical review criteria, considered in reaching its decision.

10. The decision of the IURO is binding upon the MCO carrier.

#### F. Expedited External Utilization Appeal Process

1. An appellant may request an expedited external review with the MCO carrier at the time the enrollee receives a final adverse determination if the enrollee suffers from a condition that poses an imminent, emergent or serious threat or has an emergency medical condition.

2. At the time the MCO carrier receives a request for an expedited external review, the MCO carrier shall immediately fax the Petition for External Review form to the Department and shall send a hard copy to the Department by mail.

3. If the Department determines that the review meets the criteria for expedited review, the Department shall assign an approved IURO to conduct the external review and shall notify the MCO carrier.

4. At the time the MCO carrier receives the notification of the assigned IURO, the MCO carrier shall provide or transmit all necessary documents and information considered in making the final adverse determination to the assigned IURO electronically, by telephone, by facsimile or any other available expeditious method.

5. As expeditiously as the enrollee's medical condition permits or circumstances require, but in no event more than seventy-two (72) hours after the date of the receipt of the request for an expedited external review, the IURO

shall:

a) make a decision to uphold or reverse the final adverse determination; and

b) immediately notify the appellant, the MCO carrier, and the Department of the decision.

6. Within two (2) calendar days of the immediate notification, the assigned IURO shall provide written confirmation of the decision to the appellant, the MCO carrier, and the Department

7. The decision of the IURO is binding upon the MCO carrier.

#### G. Petition to DHSS

1. If an MCO carrier receives an appellant's request for access to the IHCAP whose subject is a benefit that is a written exclusion from the enrollee's benefit package, the MCO carrier may make a written request to have the appeal reviewed for appropriate inclusion in the IHCAP by the Department. The request must be made in writing at the time the Petition for External Review Form is faxed to the Department and include any necessary supporting documentation.

2. The Department shall review the petition and may, in its discretion:

a) dismiss the appeal and notify the appellant in writing that the appeal is inappropriate for the IHCAP; or,

b) appoint an IURO to conduct a preliminary review; or,

c) appoint an IURO to conduct a full external review.

#### H. Preliminary External Review

1. If an MCO carrier receives an appellant's request for access to the IHCAP for an appeal that it believes is not appropriate for inclusion in the IHCAP, the MCO carrier may file a motion to dismiss. The motion must be made in writing at the time the Petition for External Review Form is faxed to the Department and include any necessary supporting documentation.

2. Upon the written request of an MCO carrier, the Department shall review the petition and:

a) appoint an IURO to review the details of the motion to determine if the appeal is appropriate for inclusion in the IHCAP.

(+) i. appeals that are inappropriate for inclusion are dismissed.

(-) ii. appeals that are appropriate for inclusion are subject to a full external review.

b) appoint an IURO to conduct a full external review.

I. All costs for external IURO review shall be borne by the MCO carrier. The MCO carrier shall reimburse the Department for the cost of the review within ninety (90) calendar days of the receipt of the decision by the IURO.

J. The Department shall approve IUROs eligible to be assigned to conduct external reviews.

1. Any IURO wishing to be approved to conduct external reviews shall submit an application form (as developed by the Department) and include with the form, all documentation and information necessary for the Department to determine if the IURO satisfies minimum qualifications

2. The Department shall maintain a current list of approved IUROs.

69.405 Quality Assessment and Improvement

A. Continuous Quality Improvement

1. Under the direction of the Medical Director or her/his designated physician, the MCO shall have a system-wide continuous quality improvement program to monitor the quality and appropriateness of care and services provided to enrollees. This program shall be based on a written plan which is reviewed at least semi-annually and revised as necessary. The plan shall describe at least:

- a) the scope and purpose of the program;
- b) the organizational structure of quality improvement activities;
- c) duties and responsibilities of the medical director and/or designated physician responsible for continuous quality improvement activities;
- d) contractual arrangements, where appropriate, for delegation of quality improvement activities;
- e) confidentiality policies and procedures;
- f) specification of standards of care, criteria and procedures for the assessment of the quality of services provided and the adequacy and appropriateness of health care resources utilized;
- g) a system of ongoing evaluation activities, including individual case reviews as well as pattern analysis;
- h) a system of focused evaluation activities, particularly for frequently performed and/or highly specialized procedures;
- i) a system of monitoring enrollee satisfaction and network provider's response and feedback on MCO operations;
- j) a system for verification of provider's credentials, recertification, performance reviews and obtaining information about any disciplinary action against the provider available from the Delaware Board of Medical Practice or any other state licensing board applicable to the provider;
- k) the procedures for conducting peer review activities which shall include providers within the same discipline and area of clinical practice; and,
- l) a system for evaluation of the

effectiveness of the continuous quality improvement program.

2. There shall be a multidisciplinary continuous quality improvement committee responsible for the implementation and operations of the program. The structure of the committee shall include representation from the medical, nursing and administrative staff, with substantial involvement of the medical director of the MCO.

3. The MCO shall assure that participating providers have the opportunity to participate in developing, implementing and evaluating the quality improvement system.

4. The MCO shall provide enrollees the opportunity to comment on the quality improvement process.

5. The program shall monitor the availability, accessibility, continuity and quality of care on an ongoing basis. Indicators of quality care for evaluating the health care services provided by all participating providers shall be identified and established and shall include at least:

- a) a mechanism for monitoring enrollee appointment and triage procedures including wait times to get an appointment and wait times in the office;
- b) a mechanism for monitoring enrollee continuity of care and discharge planning for both inpatient and outpatient services;
- c) a mechanism for monitoring the appropriateness of specific diagnostic and therapeutic procedures as selected by the continuous quality improvement program;
- d) a mechanism for evaluating all providers of care that is supplemental to each provider's quality improvement system;
- e) a mechanism for monitoring network adequacy and accessibility to assure the network services the needs of their diverse enrolled population; and,
- f) a system to monitor provider and enrollee access to utilization management services including at least waiting times to respond to telephone requests for service authorization, enrollee urgent care inquiries, and other services required.

6. The MCO shall develop a performance and outcome measurement system for monitoring and evaluating the quality of care provided to MCO enrollees. The performance and outcome measures shall include population-based and patient-centered indicators of quality of care, appropriateness, access, utilization, and satisfaction. Data for these performance measures shall include but not be limited to the following:

- a) indicator data collected by MCOs from chart reviews and administrative databases;
- b) enrollee satisfaction surveys;
- c) provider surveys;
- d) annual reports submitted by MCOs to

the Department; and,

e) computerized health care encounter data.

7. The MCO shall follow-up on findings from the program to assure that effective corrective actions have been taken, including at least policy revisions, procedural changes and implementation of educational activities for enrollees and providers.

8. Continuous quality improvement activities shall be coordinated with other performance monitoring activities including utilization management and monitoring of enrollee and provider complaints.

9. The MCO shall maintain documentation of the quality improvement program in a confidential manner. This documentation shall be available to the Department and shall include:

a) minutes of quality improvement committee meetings; and,

b) records of evaluation activities, performance measures, quality indicators and corrective plans and their results or outcomes.

#### B. External Quality Audit

1. Each MCO shall submit, as a part of its annual report due June 1, evidence of its most recent external quality audit that has been conducted or of acceptable accreditation status. External quality audits must be completed no less frequently than once every three (3) years. Such audit shall be performed by a nationally known accreditation organization or an independent quality review organization acceptable to the Department.

a) MCOs must submit the following information to the Department in order to receive approval for the nationally known accreditation organization or independent quality review organization that will conduct the triennial reviews or perform accreditation for the MCO:

(+) i. evidence that the nationally known accreditation organization or independent quality review organization has experience performing external quality audits or accreditation of MCOs; and,

(+) ii. the current standards for independent quality reviews or accreditations of MCOs as established and maintained by the accrediting entity.

2. The report must describe in detail the MCO's conformance to performance standards and the rules within these regulations. The report shall also describe in detail any corrective actions proposed and/or undertaken by the MCO.

3. In lieu of the external quality audit, the Department may accept evidence that each MCO has received and has maintained the appropriate accreditation from a nationally known accreditation organization or independent quality review organization.

#### C. Reporting and Disclosure Requirements

1. The Board of Directors of the MCO shall

be kept apprised of continuous quality improvement activities and be provided at least annually with regular written reports from the program delineating quality improvements, performance measures used and their results, and demonstrated improvements in clinical and service quality.

2. An MCO shall document and communicate information about its quality assessment program and its quality improvement program, and shall:

a) include a summary of its quality assessment and quality improvement programs in marketing materials;

b) include a description of its quality assessment and quality improvement programs and a statement of enrollee rights and responsibilities with respect to those programs in the materials or handbook provided to enrollees; and,

c) make available annually to providers and enrollees findings from its quality assessment and quality improvement programs and information about its progress in meeting internal goals and external standards, where available. The reports shall include a description of the methods used to assess each specific area and an explanation of how any assumptions affect the findings.

3. MCOs shall submit such performance and outcome data as the Department may request.

## PART FIVE

### SECTION 69.5 ENROLLEE RIGHTS AND RESPONSIBILITIES

69.501 The MCO shall establish and implement written policies and procedures regarding the rights of enrollees and the implementation of these rights.

69.502 In the case of nonpayment by the MCO to a provider for a covered service in accordance with the enrollee's health care contract, the provider may not bill the enrollee. This does not prohibit the provider from collecting coinsurance, deductibles or co-payments as determined by the MCO. This does not prohibit the provider and enrollee from agreeing to continue services solely at the expense of the enrollee, as long as the provider clearly informs the enrollee that the MCO will not cover these services.

69.503 The MCO shall permit enrollees to choose their own primary care physician from the MCO network. This choice may be more flexible, depending on the type of health plan purchased by the enrollee. When MCOs maintain a list of health care professionals within the plan, this list shall be updated as health care professionals are added or removed and shall include:

A. A sufficient number of primary care physicians who are accepting new enrollees; and,

B. A sufficient number of primary care physicians that reflects a diversity that is adequate to meet the diverse

needs of the enrolled populations' varied characteristics including age, gender, language, race and health status.

69.504 The MCO shall establish and implement a procedure, for those plans which do not allow direct access to a health care specialist, by which enrollees can obtain a standing referral (69.141) to a health care specialist. This procedure:

A. Shall provide for a standing referral to a specialist if the enrollee's network provider determines that the enrollee needs continuing care from a specialist;

B. May require the MCO's approval of an initial treatment plan designed by the specialist which may limit the number of visits to the specialist, limit the duration of the standing referral, or require updates on the enrollee's condition;

C. May require that referrals, procedures, tests, and other medical services be provided by network providers unless such services are not available through network providers or are not available within a reasonable period of time. The MCO shall make acceptable service arrangements with non-network providers and the enrollee, and shall prohibit balance billing.

69.505 The MCO shall provide coverage of routine patient care costs (those normally covered under an enrollee's health plan) for enrollees engaging in clinical trials for treatment of life-threatening diseases.

A. Clinical trials must meet the following requirements:

1. The subject or purpose of the trial must be the evaluation of an item or service that falls within the covered benefits of the enrollee health plan and is not specifically excluded from coverage;

2. The trial must not be designed specifically to test toxicity or disease pathophysiology;

3. The trial must have therapeutic intent;

4. Trials of therapeutic interventions must enroll patients with diagnosed disease;

5. The principal purpose of the trial is to test whether the intervention potentially improves the participant's health outcomes;

6. The trial is well-supported by available scientific and medical information or it is intended to clarify or establish the health outcomes of interventions already in common clinical use;

7. The trial does not unjustifiably duplicate existing studies; and,

8. The trial is in compliance with Federal regulations relating to the protection of human subjects.

B. Routine patient care costs include all items and services that are otherwise generally available to a qualified individual that are provided in the clinical trial with the exception of:

1. The investigational items or service itself;

2. Items and services provided solely to

satisfy data collection and analysis needs and that are not used in the direct clinical management of the enrollees; and,

3. Items and services customarily provided by the research sponsors free of charge for any enrollee in the trial.

69.504 506 The MCO shall provide each enrollee with an enrollee's benefit handbook which includes a complete statement of the enrollee's rights, a description of all complaint and appeal procedures, a clear and complete summary of the evidence of coverage, and notification of their personal financial obligations for non-covered services. The statement of the enrollee's rights shall include at least the right:

A. To available and accessible services when medically necessary, including availability of care twenty-four (24) hours a day, seven (7) days a week for urgent or emergency conditions;

B. To be treated with courtesy and consideration, and with respect for the enrollee's dignity and need for privacy;

C. To be provided with information concerning the MCO's policies and procedures regarding products, services, providers, appeal procedures and other information about the organization and the care provided;

D. To choose a primary care provider within the limits of the covered benefits and plan network, including the right to refuse care of specific practitioners;

E. To receive from the enrollee's physician(s) or provider, in terms that the enrollee understands, an explanation of her/his complete medical condition, recommended treatment, risk(s) of the treatment, expected results and reasonable medical alternatives. If the enrollee is not capable of understanding the information, the explanation shall be provided to her/his next of kin or guardian and documented in the enrollee's medical record;

F. To formulate advance directives;

G. To all the rights afforded by law or regulation as a patient in a licensed health care facility, including the right to refuse medication and treatment after possible consequences of this decision have been explained in language the enrollee understands;

H. To prompt notification, as required in these rules, of termination or changes in benefits, services or provider network;

I. To file a complaint or appeal with the MCO and to receive an answer to those complaints within a reasonable period of time; and,

J. To file a complaint with the Department or the Commissioner.

69.505 507 The MCO shall establish and implement written policies and procedures regarding the responsibilities of enrollees. A complete statement of these responsibilities shall be included in the enrollee's benefit handbook.

69.506 508 The MCO shall disclose to each new

enrollee, and any enrollee upon request, in a format and language understandable to a layperson, the following minimum information:

- A. Benefits covered and limitations;
- B. Out of pocket costs to the enrollee;
- C. Lists of participating providers;
- D. Policies on the use of primary care physicians, referrals, use of out of network providers, and out of area services;
- E. Written explanation of the appeals process;
- F. A description of and findings from the quality assurance and improvement programs;
- G. The patterns of utilization of services; and,
- H. For staff model MCOs, the location and hours of its inpatient and outpatient health services.

69.507 509 The MCO shall provide culturally competent services to the greatest extent possible.

### **PART SIX**

#### **SECTION 69.6 REQUIREMENTS FOR STAFF MODEL MCOs**

In addition to all other requirements of these regulations, staff model MCOs shall meet the requirements of this section.

##### 69.601 Environmental Health and Safety

A. Office premises and other structures operated by the MCO must have appropriate safeguards for patients.

B. All buildings shall conform to all State and medical codes and all regulations applicable to services being offered. These codes shall include but are not limited to:

- 1. State Plumbing Code.
- 2. Waste Disposal Regulations.
- 3. Public Water Supply Regulations.
- 4. Food Service Requirements.
- 5. Radiation Control Regulations.
- 6. Hazardous Waste Regulations.
- 7. Air and Water Pollution Regulations.
- 8. Hand washing facilities shall be installed in accordance with applicable State and local regulations and conveniently located.
- 9. Toilet facilities shall meet appropriate State and local regulations.
- 10. State Fire Code requirements.

C. The buildings must be architecturally accessible to handicapped individuals and comply with the Americans with Disabilities Act.

D. Measures must be taken to insure that facilities are guarded against insects and rodents.

##### E. Housekeeping

1. A housekeeping procedures manual shall be written and followed. Special emphasis shall be given to procedures applying to infectious diseases or suspect areas.

2. All premises shall be kept neat, clean, and free of litter and rubbish.

3. Walls and ceilings shall be maintained free of cracks and falling plaster and shall be cleaned and painted regularly.

4. Floors shall be cleaned regularly and in such a manner that it will minimize the spread of pathogenic organisms in the atmosphere; dry dusting and sweeping shall be prohibited.

5. Suitable equipment and supplies shall be provided for cleaning all surfaces.

6. Solutions, cleaning compounds and hazardous substances shall be properly labeled and stored in safe places.

##### 69.602 Emergency Utilities or Facilities

A. The MCO shall be equipped to handle emergencies due to equipment failures. Emergency electrical service for lighting and power for equipment essential to life safety shall be provided in accordance with hospital regulations where appropriate. (Minimum Requirements for Construction of Hospital and Health Care Facilities, Section 7.32H.)

B. In facilities which provide hospital services, the emergency electrical system shall be so controlled that the auxiliary power is brought to full voltage and frequency and can be connected within ten (10) seconds.

C. Emergency utilities for MCOs and contract providers must be supplied according to procedures performed on the premises.

##### 69.603 Construction

A. New construction or substantial modifications on an existing facility shall conform to applicable State, county and local codes, including the National Fire Protection Association Publication No. 101 - Life Safety Code, latest edition adopted by the State Fire Prevention Board.

B. Radiation requirements of the Authority on Radiation Protection shall be met.

C. Facility plans or modifications shall be submitted to the Department for review and approval prior to any work being begun.

##### 69.604 Personnel

A. The office shall be staffed by appropriately trained personnel. Appropriate manuals shall be developed to serve as guidelines and set standards for patient care provided by nonprofessional personnel.

B. Offices with five (5) or more physicians shall have at least one (1) full time registered nurse (RN).

C. Nonprofessional personnel shall have appropriate in-service education on clinical operations and procedures. The in-service training program must be conducted at least annually.

D. Primary physician. There shall be at least one (1) full time or full time equivalent (F.T.E.) physician

available on contract. There shall be at least one (1) F.T.E. primary physician for every 1,000 enrollees.

E. Medical Specialties. There shall be either full time or part-time physicians, other appropriate professional specialists, or written agreements adequate to ensure access to all needed services for enrollees.

**69.605 Equipment**

Each office operated by the MCO must have the necessary equipment and instruments to provide the required services. Equipment and instruments for services, when covered by written contract with medical specialists or other providers outside of the office, need not be present in the MCO's office. Where emergency services are provided in the office, equipment such as a defibrillator, laryngoscope and other similar equipment must be present.

**69.606 Specialized Services**

A. The MCO shall provide special services necessary for diagnosis and treatment such as ultra sound. Where it is not feasible to provide these services in the office, there shall be a written agreement for these services in a nearby location except for isolated rural areas where arrangements for these services shall be subject to review and approval by the Department.

1. The MCO's radiology services shall be supervised and conducted by a qualified radiologist, either full time or part-time; or, when radiology services are supervised and conducted by a physician who is not a qualified radiologist, the MCO shall provide for regular consultation by a qualified radiologist, who is under contract with the MCO and is responsible for reviewing all X-rays and procedures. The number of qualified radiological technologists employed shall be sufficient to meet the MCO's requirements. If the MCO operates a radiology service and provides emergency services, at least one (1) qualified technologist shall be on duty or on call at all times.

2. Pharmaceutical services, ~~when provided by the MCO,~~ must be under the direct supervision of a registered pharmacist who is responsible to the administrative staff for developing, coordinating and supervising all pharmaceutical services; or, in the case of dispensing of pharmaceuticals by a physician, such dispensing shall not violate the requirements of State law. MCOs with a licensed pharmacy shall have a Pharmacy and Therapeutics Committee. Pharmaceutical services may be provided on the premises of the MCO or by contract with an independent licensed provider. The contract shall be available for inspection by the Department at all times.

3. When the MCO provides its own emergency services, facilities must be provided to ensure prompt diagnosis and emergency treatment including adequate Emergency Room space, separate from major surgical suites. In Emergency Room facilities provided for or arranged for by the MCO there shall be as a minimum: adequate oxygen, suction, CPR, diagnostic equipment, as

well as standard emergency drugs, parenteral fluids, blood or plasma substitutes and surgical supplies. Radiology facilities, clinical laboratory facilities and current toxicology including antidotes shall be available at all times.

4. Personnel shall be trained and approved by an appropriate professional organization in the operation and procedures of emergency equipment.

**69.607 Central Sterilizing and Supply**

Autoclaves or other acceptable sterilization equipment shall be provided of a type capable of meeting the needs of the MCO and of a recognized type with approved controls and safety features. Bacteriological culture tests shall be conducted at least monthly. The maintenance program of the sterilization system shall be under the supervision of competent trained personnel.

**PART SEVEN**

**SECTION 69.7 ADMINISTRATIVE REQUIREMENTS**

**69.701 Administration**

The MCO shall designate an appropriate person or persons to handle the administrative functions of the MCO. These functions shall include the following responsibilities: interpretation, implementation and application of policies and programs established by the MCO's governing authority; establishment of safe, effective and efficient administrative management; control and operation of the services provided; authority to monitor or supervise the operation and in accordance with acceptable medical standards; and such other duties, responsibilities and tasks as the governing body or other designated authority may empower such individual(s).

**69.702 Qualifications**

Persons appointed to administrative positions in the MCO shall have the necessary current training and experience in the field of health care as appropriate to carry out the functions of their job descriptions.

**69.703 Medical Privileges**

Participating physicians shall have hospital privileges commensurate with their contractual obligations. Physicians must be licensed in Delaware.

**69.704 Medical Records**

The MCO must maintain or provide for the maintenance of a medical records system which meets the accepted standards of the health care industry and the regulations of the Department.

A. These records shall include the following information: name, identification number, age, sex, residence, employment, patient history, physical examination, laboratory data, diagnosis, treatment prescribed and drugs administered.

B. The medical record should also contain an abstract summary of any inpatient hospital care or referred

treatment.

C. Regulatory agencies shall have access to medical records for purposes of monitoring and review of MCO practices.

D. Enrollees' records shall be filed for five (5) years following active status before being destroyed.

#### 69.705 Reporting Requirements and Statistics

The MCO shall submit reports as required by these regulations.

A. The MCO shall disclose to its enrollees the following information:

1. the patterns of utilization of its services based on the information in 69.405.A.6; and,
2. the location and hours of its inpatient and outpatient health services.

B. The following information is required to be submitted to the Department on an annual basis:

1. Physician visits per enrollee per year.
2. Hospital admissions per year and per 1,000 enrollees per year.
3. Hospital days per year and per 1,000 enrollees per year.
4. Average length of stay per hospital confinement.
5. Outside consultations per year and per 1,000 enrollees per year.
6. Emergency Room visits per year and per 1,000 enrollees per year.
7. Laboratory procedures per year and per 1,000 enrollees per year.
8. X-ray procedures per year and per 1,000 enrollees per year.
9. Total number of enrollees at the end of the year.
10. Total number of enrollees enrolled during the year.
11. Total number of enrollees terminated during the year.
12. Cost of operation.
13. Current provider directory including PCPs, specialists, facilities and ancillary health care services.
14. A statistical summary evaluating the network adequacy and accessibility to the enrolled population.

15. Annual appeal report of medical necessity and disputable need to include:

- a) Number of appeals at each level of appeal;
- b) A compilation of causes underlying the appeals;
- c) Resolution of the appeals; and,
- d) Number of appeals terminated during the external review as described by 69.404E7.

16. Annual appeal report of all other appeals (not medical necessity or disputable need) to include:

- a) Number of appeals at each level of appeal;
- b) A compilation of causes underlying the appeals; and,
- c) Resolution of the appeals.

C. The following administrative reports are required by the Department whenever there is a change:

1. Full name of the Chief Executive Officer.
2. Full name of the Medical Director.
3. Address(es) of the office(s) in operation.
4. Name(s) of the hospital(s) used by the MCO

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### DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,  
Section 505 (31 Del.C. §505)

### PUBLIC NOTICE Food Stamps Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Food Stamps Program is proposing to implement policy changes to the following section of the Division of Social Services Manual (DSSM): DSSM 9060. These changes are being made as a result of the following rule: Food Stamp Program: Noncitizen Eligibility, and Certification Provisions of PL 104-193, as amended by PL 104-208, 105-33 and 105-185, Final Rule. This rule implements several provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and amended by the Omnibus Consolidated Appropriations Act of 1997 (OCA), the Balanced Budget Act of 1997 (BBA), and the Agricultural Research, Extension and Education Reform Act of 1998 (AREERA).

### Summary of Changes:

- Includes cooling costs in the heating standard utility allowance that creates a heating and cooling allowance.
- Requires a household to have two, non-heat or cooling, utility expenses to use the low utility standard.
- Allows a household living in a public housing unit or other rental housing unit which has central utility

meters and charges the household only for excess heating or cooling costs to receive the LUA (limited utility allowance) provided the household has another utility like a phone or gas cooking.

- Allows a household to claim the shelter costs of the home if not occupied by the household because of training away from home.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Mary Ann Daniels, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by November 30, 2001.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

### **REVISION DSSM 9060 Income Deductions**

F. Shelter Costs - Monthly shelter costs in excess of 50% of the household's income after all other deductions in A, B, and C above have been allowed. The shelter deduction must not exceed the maximum excess shelter deduction limit. (Refer to the current October Cost-of-Living Adjustment Administrative Notice for the maximum excess shelter deduction.) This is applicable unless the household contains a member who is age sixty (60) or over, or disabled per DSSM 9013.1. Such households will receive an excess shelter deduction for the monthly costs that exceeds 50% of the household's monthly income after all other applicable deductions.

Shelter costs will include only the following:

1) Continuing charges for the shelter occupied by the household, including rent, mortgages, condo and association fees, or other continuing charges leading to the ownership of the shelter such as loan repayments for the purchase of a mobile home, including interest on such payments. A mortgage is defined as any loan that uses the house as collateral.

Households required to pay the "last month's rent" along with the first month's rent before they can move into the dwelling can claim both amounts in the month that the household is billed.

For example, a client rents an apartment in January and must pay January's and the next December's rent in January. Both rental amounts can be used for January's food stamp budget. A rent deduction would not be allowed in December since it was paid in January.

Households required to pay a security deposit before

they move into a dwelling cannot claim the deposit as a shelter cost.

For example, a client rents a home and must pay a \$450 security deposit and the first month's rent before she moves in. The security deposit will be refunded when she moves out if the home is in good condition. She cannot claim the deposit as a shelter cost for food stamp purposes.

2) Property taxes, State and local assessments and insurance on the structure itself, but not separate costs for insuring furniture or personal belongings. If separate insurance costs for furniture or personal belongings are not identified, use the total.

3) The costs of:

- fuel for heating or air conditioning costs for cooling;
- electricity or fuel used for purposes other than heating or cooling;
- water;
- sewerage;
- well installation and maintenance;
- septic tank system installation and maintenance;
- garbage and trash collection;
- all service fees for one telephone, including, but not limited to basic service fees, subscriber line charges, relay center surcharges, 911 fees, and taxes; and
- fees charged by the utility provider for initial installation of the utility.

One time deposits cannot be included.

4) There are two standard utility allowances. ~~The standard heating allowance will be available only to households which incur heating costs separately and apart from their rent or mortgage including residents of rental housing who are billed on a monthly basis by their landlords for actual usage as determined through individual metering. The standard heat allowance is available to households receiving indirect energy assistance payments.~~

~~A household living in a public housing unit or other rental housing unit which has central utility meters and charges the household only for excess utility costs is not permitted to use either standard allowance. Such households may claim the actual verified utility expenses, which it does pay separately. Households should be advised of this option at each (re) certification.~~

The two annualized utility allowances are offered available:

The limited utility basic allowance (LUA) is available to households that do not pay for heat or air conditioning cooling, but incur costs that include electricity and fuel for purposes other than heating or cooling, water, sewerage, well and septic tank installation and maintenance, telephone, and garbage or trash collection. To get the LUA,

the household must incur expenses for at least two utilities, like phone and electric, phone and water, gas cooking and non-heat or cooling electric, or water and trash collection. A household living in a public housing unit or other rental housing unit which has central utility meters and charges the household only for excess heating or cooling costs can receive the LUA provided the household has another utility like a phone or gas cooking.

The heating and cooling utility allowance (HCSUA) is available to households with heating or air conditioning cooling costs separate from their rent or mortgage. Other households eligible for the HCSUA include:

- Residents of private rental housing who are billed on a monthly basis by their landlords for actual usage as determined through individual usage or who are charged a flat rate;
- Households receiving energy payments under the Low Income Home Energy Assistance (LIHEA);
- Households receiving direct or indirect energy assistance payments, other than LIHEA, that is excluded as income and who continue to incur any out-of-pocket heating or cooling expenses during any month in the certification period.

Heating costs must be verified to use the HCSUA. For cooling costs, you must verify the utility, like electricity, that provides the air conditioning. Accept the household's statement that they pay for cooling unless it is questionable.

(Refer to the current October Cost-of-Living Adjustment Administrative Notice for the standard utility allowances.)

Households may choose between a standard or verified actual utility costs at initial certification, recertification, or when a household moves.

~~Permit households to switch between their actual utility costs and the appropriate utility standard at the time of recertification.~~ Qualifying households not opting to itemize actual utility costs will be assigned the appropriate standard utility allowance.

If the household is billed separately for only telephone, water, sewer, or garbage collection fees (any one or more of these), the household is not entitled to claim either standard utility allowance. ~~If one of these households is billed for a telephone,~~ The standard telephone allowance will be used (for ~~these~~ households billed only for a telephone, and regardless of their actual cost). ~~In addition, these households may claim the actual utility expenses (water, sewer, or garbage) for which they are billed separately from rent or mortgage payments.~~ (Refer to the current October Cost-of-Living Adjustment Administrative Notice for the telephone allowance.)

If a household is billed only for one utility, not heating/

cooling or telephone, the household is allowed the actual cost for that utility.

Prorating the SUA

When households live with and share utility expenses with other individuals or households, whether they are participating in the Food Stamp Program or not, the agency will prorate the standard utility allowances based on the number of households sharing the utility costs.

The following are examples of prorating the SUA:

Two (2) households share a residence. They both contribute towards the utility costs. The food stamp household pays \$50 towards the costs each month. The food stamp household is entitled to one-half of the SUA.

A food stamp household shares an apartment and utilities with another individual. The food stamp household pays two-thirds of the utility costs. The household is entitled to one-half of the SUA.

Three (3) households share a residence and utility expenses. The food stamp household pays a different amount each month based on the amount of the costs. The food stamp household is entitled to a one-third proration of the SUA.

4) The shelter costs of the home if not occupied by the household because of employment or training away from home, illness or abandonment caused by a natural disaster or casualty loss. For costs of a home vacated by the household to be included in the household's shelter costs, the household must intend to return to the home; the current occupants of the home, if any must not be claiming the shelter costs for food stamp purposes; and the home must not be leased or rented during the absence of the household.

A household that has both an occupied home and an unoccupied home is only entitled to one standard utility allowance.

5) Charges for the repair of the home that was substantially damaged or destroyed due to a natural disaster such as a fire or flood. Shelter costs will not include charges for repair of the home that have been or will be reimbursed by private or public relief agencies, insurance companies, or from any other source. Repairs, other than those due to natural disasters, do not count as a deduction, even when tenants must pay for them or be evicted.

**DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 505 (31 Del.C. §505)

**PUBLIC NOTICE**  
**Medicaid/Medical Assistance Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to implement a policy change to the following section of the Division of Social Services Manual (DSSM): DSSM 20620.1. Effective October 1, 2001, this change, approved and funded by the State Legislature, will increase the monthly personal needs allowance protected for individuals who are eligible for Medicaid and reside in nursing facilities.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Mary Ann Daniels, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by November 30, 2001.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

**REVISION**  
**20620.1 Personal Needs**

~~\$42.00~~ \$44.00 per month of available income is to be protected for the recipients direct personal needs.

If the recipient receives a reduced VA Improved Pension (not to exceed \$90) the personal needs amount will be \$90 or the amount of personal needs allowance in the state plan, whichever is greater.

If the recipient regularly attends a rehab/educational program off the grounds of his nursing facility, including employment for the purpose of rehabilitation in a sheltered workshop off the grounds of the facility, \$50.00 per month (rather than ~~\$42~~ \$44) will be protected.

For nursing home residents who are participating in substantial gainful activity (SGA) (20 CFR 416.971), the following amounts, not to exceed the Adult Foster Care rate will be deducted from gross earned income:

- Mandatory payroll deductions that are a condition of employment including, but not limited to:

Federal, State and Local Taxes  
FICA  
Union Dues  
Insurance premiums  
Pension contributions  
Transportation costs as paid to & from work  
Clothing and personal needs allowance of \$75/  
month.

If earnings average more than \$700 a month in a calendar year, this is considered SGA and DSS can allow a personal needs allowance of up to the AFC rate. If earnings average less than \$300 a month in a calendar year, this is not ordinarily considered SGA and DSS can allow the ~~\$42~~ \$44 or \$50 personal needs allowance. If average earnings are between \$300 and \$700, DSS must consider other factors to determine whether or not the work constitutes SGA. Other factors include considering if the work is comparable to unimpaired people in the community performing similar jobs.

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**DEPARTMENT OF INSURANCE**

Statutory Authority: 18 Delaware Code,  
Section 311 (18 Del.C. §311)

**NOTICE****Insurance Commissioner Donna Lee H. Williams**

Hereby gives notice that a PUBLIC HEARING will be held on Tuesday November 27, 2001 at 10:00 a.m. in the Executive Conference Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The hearing is to consider implementation of Regulation No. 85 (Proposed) entitled "**Valuation Of Life Insurance Policies**"

The purpose of the Regulation is to select mortality factors and rules for their use, set rules concerning a minimum standard for the valuation of plans with non-level premiums or benefits, and set rules concerning a minimum standard for the valuation of plans with secondary guarantees. The method for calculating basic reserves defined in the proposed regulation will constitute the Commissioners' Reserve Valuation Method for policies to which the proposed regulation is applicable and will conform to similar standards applicable nationally.

The hearing will be conducted in accordance with the Delaware Administrative Procedures Act, 29 Del. C. Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the Hearing. Written comments must be received by the Department of Insurance no later than

Friday, November 23, 2001, and should be addressed to Deputy Attorney General Michael J. Rich, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904. Those wishing to testify or give an oral statement must notify Michael J. Rich at (302) 739-4251, Ext. 171 no later than Friday, November 23, 2001.

## Regulation 85 Valuation of Life Insurance Policies

### Sections

1. Purpose
2. Authority
3. Applicability
4. Definitions
5. General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves
6. Calculation of Minimum Valuation Standard for Policies with Guaranteed Non-level Gross Premiums or Guaranteed Non-level Benefits (Other Than Universal Life Policies)
7. Calculation of Minimum Valuation Standard for Flexible Premium and Fixed Premium Universal Life Insurance Policies That Contain Provisions Resulting in the Ability of a Policy Owner to Keep a Policy in Force Over a Secondary Guarantee Period
8. Effective Date

### Appendix.

#### Section 1. Purpose

A. The purpose of this regulation is to provide:

- (1) Tables of select mortality factors and rules for their use;
- (2) Rules concerning a minimum standard for the valuation of plans with non-level premiums or benefits; and
- (3) Rules concerning a minimum standard for the valuation of plans with secondary guarantees.

B. The method for calculating basic reserves defined in this regulation will constitute the Commissioners' Reserve Valuation Method for policies to which this regulation is applicable.

#### Section 2. Authority

This regulation is issued under the authority of 18 Del. C. §312, 18 Del. C. Chapter 11 and 29 Del. C. Chapter 101.

#### Section 3. Applicability

This regulation shall apply to all life insurance policies, with or without nonforfeiture values, issued on or after January 1, 2002, subject to the following exceptions and conditions.

- A. Exceptions

(1) This regulation shall not apply to any individual life insurance policy issued on or after January 1, 2002 if the policy is issued in accordance with and as a result of the exercise of a reentry provision contained in the original life insurance policy of the same or greater face amount, issued before January 1, 2002, that guarantees the premium rates of the new policy. This regulation also shall not apply to subsequent policies issued as a result of the exercise of such a provision, or a derivation of the provision, in the new policy.

(2) This regulation shall not apply to any universal life policy that meets all the following requirements:

(a) Secondary guarantee period, if any, is five (5) years or less;

(b) Specified premium for the secondary guarantee period is not less than the net level reserve premium for the secondary guarantee period based on the CSO valuation tables as defined in Section 4F and the applicable valuation interest rate; and

(c) The initial surrender charge is not less than 100 percent of the first year annualized specified premium for the secondary guarantee period.

(3) This regulation shall not apply to any variable life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts.

(4) This regulation shall not apply to any variable universal life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts.

(5) This regulation shall not apply to a group life insurance certificate unless the certificate provides for a stated or implied schedule of maximum gross premiums required in order to continue coverage in force for a period in excess of one year.

#### B. Conditions

(1) Calculation of the minimum valuation standard for policies with guaranteed non-level gross premiums or guaranteed non-level benefits (other than universal life policies), or both, shall be in accordance with the provisions of Section 6.

(2) Calculation of the minimum valuation standard for flexible premium and fixed premium universal life insurance policies, that contain provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period shall be in accordance with the provisions of Section 7.

#### Section 4. Definitions

For purposes of this regulation:

A. "**Basic reserves**" means reserves calculated in accordance with 18 Del. C. 1113(c).

B. "**Contract segmentation method**" means the

method of dividing the period from issue to mandatory expiration of a policy into successive segments, with the length of each segment being defined as the period from the end of the prior segment (from policy inception, for the first segment) to the end of the latest policy year as determined below. All calculations are made using the 1980 CSO valuation tables, as defined in Subsection F of this section, (or any other valuation mortality table adopted by the National Association of Insurance Commissioners (NAIC) after the effective date of this regulation and promulgated by regulation by the commissioner for this purpose), and, if elected, the optional minimum mortality standard for deficiency reserves stipulated in Section 5B of this regulation.

The length of a particular contract segment shall be set equal to the minimum of the value  $t$  for which  $G_t$  is greater than  $R_t$  (if  $G_t$  never exceeds  $R_t$  the segment length is deemed to be the number of years from the beginning of the segment to the mandatory expiration date of the policy), where  $G_t$  and  $R_t$  are defined as follows:

$$G_t = \frac{GP_{x+k+t}}{GP_{x+k+t-1}}$$

where:

$x$  = original issue age;

$k$  = the number of years from the date of issue to the beginning of the segment;

$t = 1, 2, \dots$ ;  $t$  is reset to 1 at the beginning of each segment;

$GP_{x+k+t-1}$  = Guaranteed gross premium per thousand of face amount for year  $t$  of the segment, ignoring policy fees only if level for the premium paying period of the policy.

$$R_t = \frac{qx_{k+t}}{qx_{k+t-1}}. \text{ However, } R_t \text{ may be increased or decreased by one percent in any policy year, at the company's option, but } R_t \text{ shall not be less than one;}$$

where:

$x$ ,  $k$  and  $t$  are as defined above, and

$qx_{k+t-1}$  = valuation mortality rate for deficiency reserves in policy year  $k+t$  but using the mortality of Section 5B(2) if Section 5B(3) is elected for deficiency reserves.

However, if  $GP_{x+k+t}$  is greater than 0 and  $GP_{x+k+t-1}$  is equal to 0,  $G_t$  shall be deemed to be 1000. If  $GP_{x+k+t}$  and  $GP_{x+k+t-1}$  are both equal to 0,  $G_t$  shall be

deemed to be 0.

C. "**Deficiency reserves**" means the excess, if greater than zero, of

(1) Minimum reserves calculated in accordance with 18 Del. C. 1113(g) over

(2) Basic reserves.

D. "**Guaranteed gross premiums**" means the premiums under a policy of life insurance that are guaranteed and determined at issue.

E. "**Maximum valuation interest rates**" means the interest rates defined in 18 Del. C. 1113(b)(3) (Computation of Minimum Standard by Calendar Year of Issue) that are to be used in determining the minimum standard for the valuation of life insurance policies.

F. "**1980 CSO valuation tables**" means the Commissioners' 1980 Standard Ordinary Mortality Table (1980 CSO Table) without ten-year selection factors, incorporated into the 1980 amendments to the NAIC Standard Valuation Law, and variations of the 1980 CSO Table approved by the NAIC, such as the smoker and nonsmoker versions approved in December 1983.

G. "**Scheduled gross premium**" means the smallest illustrated gross premium at issue for other than universal life insurance policies. For universal life insurance policies, scheduled gross premium means the smallest specified premium described in Section 7A(3), if any, or else the minimum premium described in Section 7A(4).

H.(1) "**Segmented reserves**" means reserves, calculated using segments produced by the contract segmentation method, equal to the present value of all future guaranteed benefits less the present value of all future net premiums to the mandatory expiration of a policy, where the net premiums within each segment are a uniform percentage of the respective guaranteed gross premiums within the segment. The uniform percentage for each segment is such that, at the beginning of the segment, the present value of the net premiums within the segment equals:

(a) The present value of the death benefits within the segment, plus

(b) The present value of any unusual guaranteed cash value (see Section 6D) occurring at the end of the segment, less

(c) Any unusual guaranteed cash value occurring at the start of the segment, plus

(d) For the first segment only, the excess of the Item (i) over Item (ii), as follows:

(i) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for in the first segment after the first policy year, divided by the present value, at the date of issue, of an annuity of one per year payable on the first and each subsequent anniversary within the first segment on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the nineteen-year

premium whole life plan of insurance of the same renewal year equivalent level amount at an age one year higher than the age at issue of the policy.

(ii) A net one year term premium for the benefits provided for in the first policy year.

(2) The length of each segment is determined by the "contract segmentation method," as defined in this section.

(3) The interest rates used in the present value calculations for any policy may not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the sum of the lengths of all segments of the policy.

(4) For both basic reserves and deficiency reserves computed by the segmented method, present values shall include future benefits and net premiums in the current segment and in all subsequent segments.

I. **"Tabular cost of insurance"** means the net single premium at the beginning of a policy year for one-year term insurance in the amount of the guaranteed death benefit in that policy year.

J. **"Ten-year select factors"** means the select factors adopted with the 1980 amendments to the NAIC Standard Valuation Law.

K. (1) **"Unitary reserves"** means the present value of all future guaranteed benefits less the present value of all future modified net premiums, where:

(a) Guaranteed benefits and modified net premiums are considered to the mandatory expiration of the policy; and

(b) Modified net premiums are a uniform percentage of the respective guaranteed gross premiums, where the uniform percentage is such that, at issue, the present value of the net premiums equals the present value of all death benefits and pure endowments, plus the excess of Item (i) over Item (ii), as follows

(i) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per year payable on the first and each subsequent anniversary of the policy on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one year higher than the age at issue of the policy.

(ii) A net one year term premium for the benefits provided for in the first policy year.

(2) The interest rates used in the present value calculations for any policy may not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the length from issue to the mandatory expiration of the policy.

L. **"Universal life insurance policy"** means any individual life insurance policy under the provisions of

which separately identified interest credits (other than in connection with dividend accumulations, premium deposit funds, or other supplementary accounts) and mortality or expense charges are made to the policy.

## **Section 5. General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves**

A. At the election of the company for any one or more specified plans of life insurance, the minimum mortality standard for basic reserves may be calculated using the 1980 CSO valuation tables with select mortality factors (or any other valuation mortality table adopted by the NAIC after the effective date of this regulation and promulgated by regulation by the commissioner for this purpose). If select mortality factors are elected, they may be:

(1) The ten-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law;

(2) The select mortality factors in the Appendix; or

(3) Any other table of select mortality factors adopted by the NAIC after the effective date of this regulation and promulgated by regulation by the commissioner for the purpose of calculating basic reserves.

B. Deficiency reserves, if any, are calculated for each policy as the excess, if greater than zero, of the quantity A over the basic reserve. The quantity A is obtained by recalculating the basic reserve for the policy using guaranteed gross premiums instead of net premiums when the guaranteed gross premiums are less than the corresponding net premiums. At the election of the company for any one or more specified plans of insurance, the quantity A and the corresponding net premiums used in the determination of quantity A may be based upon the 1980 CSO valuation tables with select mortality factors (or any other valuation mortality table adopted by the NAIC after the effective date of this regulation and promulgated by regulation by the commissioner). If select mortality factors are elected, they may be:

(1) The ten-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law;

(2) The select mortality factors in the Appendix of this regulation;

(3) For durations in the first segment, X percent of the select mortality factors in the Appendix, subject to the following:

(a) X may vary by policy year, policy form, underwriting classification, issue age, or any other policy factor expected to affect mortality experience;

(b) X shall not be less than twenty percent (20%);

(c) X shall not decrease in any successive policy years;

(d) X is such that, when using the valuation

interest rate used for basic reserves, Item (i) is greater than or equal to Item (ii);

(i) The actuarial present value of future death benefits, calculated using the mortality rates resulting from the application of X;

(ii) The actuarial present value of future death benefits calculated using anticipated mortality experience without recognition of mortality improvement beyond the valuation date;

(e) X is such that the mortality rates resulting from the application of X are at least as great as the anticipated mortality experience, without recognition of mortality improvement beyond the valuation date, in each of the first five (5) years after the valuation date;

(f) The appointed actuary shall increase X at any valuation date where it is necessary to continue to meet all the requirements of Subsection B(3);

(g) The appointed actuary may decrease X at any valuation date as long as X does not decrease in any successive policy years and as long as it continues to meet all the requirements of Subsection B(3); and

(h) The appointed actuary shall specifically take into account the adverse effect on expected mortality and lapsation of any anticipated or actual increase in gross premiums.

(i) If X is less than 100 percent at any duration for any policy, the following requirements shall be met:

(i) The appointed actuary shall annually prepare an actuarial opinion and memorandum for the company in conformance with the requirements of 18 Del. C. §1111(c); and

(ii) The appointed actuary shall annually opine for all policies subject to this regulation as to whether the mortality rates resulting from the application of X meet the requirements of Subsection B(3). This opinion shall be supported by an actuarial report, subject to appropriate Actuarial Standards of Practice promulgated by the Actuarial Standards Board of the American Academy of Actuaries. The X factors shall reflect anticipated future mortality, without recognition of mortality improvement beyond the valuation date, taking into account relevant emerging experience.

(4) Any other table of select mortality factors adopted by the NAIC after the effective date of this regulation and promulgated by regulation by the commissioner for the purpose of calculating deficiency reserves.

C. This subsection applies to both basic reserves and deficiency reserves. Any set of select mortality factors may be used only for the first segment. However, if the first segment is less than ten (10) years, the appropriate ten-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law may be used thereafter through the tenth policy year from the date of

issue.

D. In determining basic reserves or deficiency reserves, guaranteed gross premiums without policy fees may be used where the calculation involves the guaranteed gross premium but only if the policy fee is a level dollar amount after the first policy year. In determining deficiency reserves, policy fees may be included in guaranteed gross premiums, even if not included in the actual calculation of basic reserves.

E. Reserves for policies that have changes to guaranteed gross premiums, guaranteed benefits, guaranteed charges, or guaranteed credits that are unilaterally made by the insurer after issue and that are effective for more than one year after the date of the change shall be the greatest of the following: (1) reserves calculated ignoring the guarantee, (2) reserves assuming the guarantee was made at issue, and (3) reserves assuming that the policy was issued on the date of the guarantee.

F. The commissioner may require that the company document the extent of the adequacy of reserves for specified blocks, including but not limited to policies issued prior to the effective date of this regulation. This documentation may include a demonstration of the extent to which aggregation with other non-specified blocks of business is relied upon in the formation of the appointed actuary opinion pursuant to and consistent with the requirements of 18 Del. C. §1111(c).

### **Section 6. Calculation of Minimum Valuation Standard for Policies with Guaranteed Non-level Gross Premiums or Guaranteed Non-level Benefits (Other than Universal Life Policies)**

#### **A. Basic Reserves**

Basic reserves shall be calculated as the greater of the segmented reserves and the unitary reserves. Both the segmented reserves and the unitary reserves for any policy shall use the same valuation mortality table and selection factors. At the option of the insurer, in calculating segmented reserves and net premiums, either of the adjustments described in Paragraph (1) or (2) below may be made:

(1) Treat the unitary reserve, if greater than zero, applicable at the end of each segment as a pure endowment and subtract the unitary reserve, if greater than zero, applicable at the beginning of each segment from the present value of guaranteed life insurance and endowment benefits for each segment.

(2) Treat the guaranteed cash surrender value, if greater than zero, applicable at the end of each segment as a pure endowment; and subtract the guaranteed cash surrender value, if greater than zero, applicable at the beginning of each segment from the present value of guaranteed life insurance and endowment benefits for each segment.

#### **B. Deficiency Reserves**

(1) The deficiency reserve at any duration shall be calculated:

(a) On a unitary basis if the corresponding basic reserve determined by Subsection A is unitary;

(b) On a segmented basis if the corresponding basic reserve determined by Subsection A is segmented; or

(c) On the segmented basis if the corresponding basic reserve determined by Subsection A is equal to both the segmented reserve and the unitary reserve.

(2) This subsection shall apply to any policy for which the guaranteed gross premium at any duration is less than the corresponding modified net premium calculated by the method used in determining the basic reserves, but using the minimum valuation standards of mortality (specified in Section 5B) and rate of interest.

(3) Deficiency reserves, if any, shall be calculated for each policy as the excess if greater than zero, for the current and all remaining periods, of the quantity A over the basic reserve, where A is obtained as indicated in Section 5B.

(4) For deficiency reserves determined on a segmented basis, the quantity A is determined using segment lengths equal to those determined for segmented basic reserves.

#### C. Minimum Value

Basic reserves may not be less than the tabular cost of insurance for the balance of the policy year, if mean reserves are used. Basic reserves may not be less than the tabular cost of insurance for the balance of the current modal period or to the paid-to-date, if later, but not beyond the next policy anniversary, if mid-terminal reserves are used. The tabular cost of insurance shall use the same valuation mortality table and interest rates as that used for the calculation of the segmented reserves. However, if select mortality factors are used, they shall be the ten-year select factors incorporated into the 1980 amendments of the NAIC Standard Valuation Law. In no case may total reserves (including basic reserves, deficiency reserves and any reserves held for supplemental benefits that would expire upon contract termination) be less than the amount that the policy owner would receive (including the cash surrender value of the supplemental benefits, if any, referred to above), exclusive of any deduction for policy loans, upon termination of the policy.

#### D. Unusual Pattern of Guaranteed Cash Surrender Values

(1) For any policy with an unusual pattern of guaranteed cash surrender values, the reserves actually held prior to the first unusual guaranteed cash surrender value shall not be less than the reserves calculated by treating the first unusual guaranteed cash surrender value as a pure endowment and treating the policy as an n year policy providing term insurance plus a pure endowment equal to the unusual cash surrender value, where n is the number of years

from the date of issue to the date the unusual cash surrender value is scheduled.

(2) The reserves actually held subsequent to any unusual guaranteed cash surrender value shall not be less than the reserves calculated by treating the policy as an n year policy providing term insurance plus a pure endowment equal to the next unusual guaranteed cash surrender value, and treating any unusual guaranteed cash surrender value at the end of the prior segment as a net single premium, where

(a) n is the number of years from the date of the last unusual guaranteed cash surrender value prior to the valuation date to the earlier of:

(i) The date of the next unusual guaranteed cash surrender value, if any, that is scheduled after the valuation date; or

(ii) The mandatory expiration date of the policy; and

(b) The net premium for a given year during the n year period is equal to the product of the net to gross ratio and the respective gross premium; and

(c) The net to gross ratio is equal to Item (i) divided by Item (ii) as follows:

(i) The present value, at the beginning of the n year period, of death benefits payable during the n year period plus the present value, at the beginning of the n year period, of the next unusual guaranteed cash surrender value, if any, minus the amount of the last unusual guaranteed cash surrender value, if any, scheduled at the beginning of the n year period.

(ii) The present value, at the beginning of the n year period, of the scheduled gross premiums payable during the n year period.

(3) For purposes of this subsection, a policy is considered to have an unusual pattern of guaranteed cash surrender values if any future guaranteed cash surrender value exceeds the prior year's guaranteed cash surrender value by more than the sum of:

(a) One hundred ten percent (110%) of the scheduled gross premium for that year;

(b) One hundred ten percent (110%) of one year's accrued interest on the sum of the prior year's guaranteed cash surrender value and the scheduled gross premium using the nonforfeiture interest rate used for calculating policy guaranteed cash surrender values; and

(c) Five percent (5%) of the first policy year surrender charge, if any.

#### E. Optional Exemption for Yearly Renewable Term Reinsurance. At the option of the company, the following approach for reserves on YRT reinsurance may be used:

(1) Calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year.

(2) Basic reserves shall never be less than the tabular cost of insurance for the appropriate period, as

defined in Subsection C.

(3) Deficiency reserves.

(a) For each policy year, calculate the excess, if greater than zero, of the valuation net premium over the respective maximum guaranteed gross premium.

(b) Deficiency reserves shall never be less than the sum of the present values, at the date of valuation, of the excesses determined in accordance with Subparagraph (a) above.

(4) For purposes of this subsection, the calculations use the maximum valuation interest rate and the 1980 CSO mortality tables with or without ten-year select mortality factors, or any other table adopted after the effective date of this regulation by the NAIC and promulgated by regulation by the commissioner for this purpose.

(5) A reinsurance agreement shall be considered YRT reinsurance for purposes of this subsection if only the mortality risk is reinsured.

(6) If the assuming company chooses this optional exemption, the ceding company's reinsurance reserve credit shall be limited to the amount of reserve held by the assuming company for the affected policies.

F. Optional Exemption for Attained-Age-Based Yearly Renewable Term Life Insurance Policies. At the option of the company, the following approach for reserves for attained-age-based YRT life insurance policies may be used:

(1) Calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year.

(2) Basic reserves shall never be less than the tabular cost of insurance for the appropriate period, as defined in Subsection 6C.

(3) Deficiency reserves.

(a) For each policy year, calculate the excess, if greater than zero, of the valuation net premium over the respective maximum guaranteed gross premium.

(b) Deficiency reserves shall never be less than the sum of the present values, at the date of valuation, of the excesses determined in accordance with Subparagraph (a) above.

(4) For purposes of this subsection, the calculations use the maximum valuation interest rate and the 1980 CSO valuation tables with or without ten-year select mortality factors, or any other table adopted after the effective date of this regulation by the NAIC and promulgated by regulation by the commissioner for this purpose.

(5) A policy shall be considered an attained-age-based YRT life insurance policy for purposes of this subsection if:

(a) The premium rates (on both the initial current premium scale and the guaranteed maximum premium scale) are based upon the attained age of the insured such that the rate for any given policy at a given attained age of the insured is independent of the year the

policy was issued; and

(b) The premium rates (on both the initial current premium scale and the guaranteed maximum premium scale) are the same as the premium rates for policies covering all insureds of the same sex, risk class, plan of insurance and attained age.

(6) For policies that become attained-age-based YRT policies after an initial period of coverage, the approach of this subsection may be used after the initial period if:

(a) The initial period is constant for all insureds of the same sex, risk class and plan of insurance; or

(b) The initial period runs to a common attained age for all insureds of the same sex, risk class and plan of insurance; and

(c) After the initial period of coverage, the policy meets the conditions of Paragraph (5) above.

(7) If this election is made, this approach shall be applied in determining reserves for all attained-age-based YRT life insurance policies issued on or after the effective date of this regulation.

G. Exemption from Unitary Reserves for Certain n-Year Renewable Term Life Insurance Policies. Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if the following conditions are met:

(1) The policy consists of a series of n-year periods, including the first period and all renewal periods, where n is the same for each period, except that for the final renewal period, n may be truncated or extended to reach the expiry age, provided that this final renewal period is less than 10 years and less than twice the size of the earlier n-year periods, and for each period, the premium rates on both the initial current premium scale and the guaranteed maximum premium scale are level;

(2) The guaranteed gross premiums in all n-year periods are not less than the corresponding net premiums based upon the 1980 CSO Table with or without the ten-year select mortality factors; and

(3) There are no cash surrender values in any policy year.

H. Exemption from Unitary Reserves for Certain Juvenile Policies

Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if the following conditions are met, based upon the initial current premium scale at issue:

(1) At issue, the insured is age twenty-four (24) or younger;

(2) Until the insured reaches the end of the juvenile period, which shall occur at or before age twenty-five (25), the gross premiums and death benefits are level, and there are no cash surrender values; and

(3) After the end of the juvenile period, gross premiums are level for the remainder of the premium paying period, and death benefits are level for the remainder of the

life of the policy.

**Section 7. Calculation of Minimum Valuation Standard for Flexible Premium and Fixed Premium Universal Life Insurance Policies That Contain Provisions Resulting in the Ability of a Policy owner to Keep a Policy in Force Over a Secondary Guarantee Period**

**A. General**

(1) Policies with a secondary guarantee include:

(a) A policy with a guarantee that the policy will remain in force at the original schedule of benefits, subject only to the payment of specified premiums;

(b) A policy in which the minimum premium at any duration is less than the corresponding one year valuation premium, calculated using the maximum valuation interest rate and the 1980 CSO valuation tables with or without ten-year select mortality factors, or any other table adopted after the effective date of this regulation by the NAIC and promulgated by regulation by the commissioner for this purpose; or

(c) A policy with any combination of Subparagraph (a) and (b).

(2) A secondary guarantee period is the period for which the policy is guaranteed to remain in force subject only to a secondary guarantee. When a policy contains more than one secondary guarantee, the minimum reserve shall be the greatest of the respective minimum reserves at that valuation date of each unexpired secondary guarantee, ignoring all other secondary guarantees. Secondary guarantees that are unilaterally changed by the insurer after issue shall be considered to have been made at issue. Reserves described in Subsections B and C below shall be recalculated from issue to reflect these changes.

(3) Specified premiums mean the premiums specified in the policy, the payment of which guarantees that the policy will remain in force at the original schedule of benefits, but which otherwise would be insufficient to keep the policy in force in the absence of the guarantee if maximum mortality and expense charges and minimum interest credits were made and any applicable surrender charges were assessed.

(4) For purposes of this section, the minimum premium for any policy year is the premium that, when paid into a policy with a zero account value at the beginning of the policy year, produces a zero account value at the end of the policy year. The minimum premium calculation shall use the policy cost factors (including mortality charges, loads and expense charges) and the interest crediting rate, which are all guaranteed at issue.

(5) The one-year valuation premium means the net one-year premium based upon the original schedule of benefits for a given policy year. The one-year valuation premiums for all policy years are calculated at issue. The select mortality factors defined in Section 5B(2), (3), and (4)

may not be used to calculate the one-year valuation premiums.

(6) The one-year valuation premium should reflect the frequency of fund processing, as well as the distribution of deaths assumption employed in the calculation of the monthly mortality charges to the fund.

B. Basic reserves for the secondary guarantees shall be the segmented reserves for the secondary guarantee period. In calculating the segments and the segmented reserves, the gross premiums shall be set equal to the specified premiums, if any, or otherwise to the minimum premiums, that keep the policy in force and the segments will be determined according to the contract segmentation method as defined in Section 4B.

C. Deficiency reserves, if any, for the secondary guarantees shall be calculated for the secondary guarantee period in the same manner as described in Section 6B with gross premiums set equal to the specified premiums, if any, or otherwise to the minimum premiums that keep the policy in force.

D. The minimum reserves during the secondary guarantee period are the greater of:

(1) The basic reserves for the secondary guarantee plus the deficiency reserve, if any, for the secondary guarantees; or

(2) The minimum reserves required by other rules or regulations governing universal life plans.

**Section 8. Effective Date**

This regulation shall become effective ten days after publication in the Register of Regulations.

**\* PLEASE NOTE: DUE TO SPACE CONSTRAINTS THE TABLES IN APPENDIX A ARE NOT BEING REPRODUCED HERE. THEY ARE AVAILABLE UPON REQUEST FROM THE REGISTRAR'S OFFICE.**

**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL**

**DIVISION OF WATER RESOURCES**

Statutory Authority: 7 Delaware Code,  
Chapter 60 (7 Del.C. Ch. 60)

**Total Maximum Daily Load (TMDL) for Nutrients in the  
Appoquinimink Watershed, Delaware**

**Brief Synopsis of the Subject, Substance, and Issues**

The Department of Natural Resources and Environmental Control (DNREC) is proposing to adopt a

Total Maximum Daily Load (TMDL) Regulation for nutrients in the Appoquinimink Watershed based upon an expanded version of the TMDL imposed by the Environmental Protection Agency (EPA) in 1998. A TMDL sets a limit on the amount of a substance that can enter a water body while still assuring that applicable water quality standards are met and beneficial stream uses are protected. A TMDL is composed of three components, including a Waste Load Allocation (WLA) for point source discharges, a Load Allocation (LA) for non-point sources, and a Margin of Safety (MOS) to account for uncertainties.

#### **Possible Terms of the Agency Action**

Following adoption of the proposed Total Maximum Daily Load for nutrients in the Appoquinimink Watershed, DNREC will develop a Pollution Control Strategy (PCS) to achieve the necessary load reductions. The PCS will identify specific pollution reduction activities and timeframes and will be developed in concert with affected parties, the interested public, and the Department's ongoing Whole Basin Management Program.

#### **Statutory Basis or Legal Authority to Act**

The authority to develop a TMDL is provided by Title 7 of the Delaware Code, Chapter 60, and Section 303(d) of the Federal Clean Water Act, 33 U.S.C. 1251 et. seq., as amended.

#### **Other Legislation That May Be Impacted**

None

#### **Notice of Public Comment**

A public workshop will be held on Wednesday, December 5, 2001, between 3:30 and 5:30 p.m., at the Volunteer Hose Company of Middletown Hall, 27 West Green Street, Middletown, DE 19709.

A public hearing will be held on Wednesday, December 5, 2001, between 6:00 and 8:00 p.m., at the Volunteer Hose Company of Middletown Hall, 27 West Green Street, Middletown, DE 19709. The hearing record will remain open until 4:30 p.m., December 19, 2001. Please bring written comments to the hearing or send them to Rod Thompson, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE, 19901; facsimile: (302) 739-6242. All written comments must be received by 4:30 p.m., December 19, 2001. For planning purposes, those individuals wishing to make oral comments at the public hearing are requested to notify Marianne Brady, (302) 739-4590; facsimile: (302) 739-6140; email: marianne.brady@state.de.us by 12:00 p.m., December 5, 2001.

Additional information and supporting technical documents may be obtained from the Watershed Assessment Section, Division of Water Resources, Department of Natural Resources and Environmental Control, Silver Lake

Plaza – Suite 220, 820 Silver Lake Blvd, Dover, DE 19904-2464, (302) 739-4590, facsimile: (302) 739-6140.

#### **Prepared By:**

Samuel P. Myoda, Watershed Assessment Section, (302) 739-4590.

### **Total Maximum Daily Load (TMDL) for the Appoquinimink River Watershed, Delaware**

#### **A. Introduction and Background**

Intensive water quality monitoring performed by Delaware Department of Natural Resources and Environmental Control (DNREC) has shown that the waters of the Appoquinimink River and several of its tributaries and ponds are impaired as the result of low dissolved oxygen and high nutrients. Low concentration of dissolved oxygen is harmful to fish, shellfish, and other aquatic life. With regard to nutrients (nitrogen and phosphorus), although they are essential elements for both plants and animals, their presence in excessive amounts causes undesirable conditions. Symptoms of nutrient over-enrichment include: frequent phytoplankton blooms, decreased water clarity, dissolved oxygen deficiency, alteration of composition and diversity of economically important native species of plants and animals, and possible human health effects.

A reduction in the amount of nutrients and oxygen consuming pollutants reaching the waters of the Appoquinimink River and its tributaries and ponds is necessary to reverse their undesirable impacts. These pollutants and nutrients enter the waters of the Appoquinimink River from point sources and nonpoint sources. Point sources are end-of-pipe discharges from municipal or industrial wastewater treatment plants. Nonpoint sources include runoffs from agricultural and urban areas, seepages from septic tanks, and ground water discharges.

Section 303(d) of the Federal Clean Water Act (CWA) requires States to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for the pollutants of concern. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components: Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS) to account for uncertainties and future growth.

DNREC listed the Appoquinimink River and several of its tributaries and ponds on the State's 1996, 1998, and 2000 303(d) Lists and proposes the following Total Maximum Daily Load regulation for nitrogen, phosphorous, and Carbonaceous Biochemical Oxygen Demand (CBOD).

**B. Total Maximum Daily Loads (TMDLs) Regulation for the Appoquinimink River Watershed, Delaware**

**Article 1.** The total nitrogen load from the only point source facility in the watershed, the Middletown-Odessa-Townsend (MOT) Regional Wastewater Treatment Plant, shall be limited to 10.4 pounds per day.

**Article 2.** The total phosphorous load from the only point source facility in the watershed, the Middletown-Odessa-Townsend (MOT) Regional Wastewater Treatment Plant, shall be limited to 2.1 pounds per day.

**Article 3.** The CBOD<sub>5</sub> (5-day Carbonaceous Biochemical Oxygen Demand) load from the only point source facility in the watershed, the Middletown-Odessa-Townsend (MOT) Regional Wastewater Treatment Plant, shall be limited to 34.8 pounds per day.

**Article 4.** The nonpoint source nitrogen load in the entire watershed shall be reduced by 20 percent (from the 2000 base-line). This shall result in a yearly-average total nitrogen load of 334.1 pounds per day.

**Article 5.** The nonpoint source phosphorus load in the entire watershed shall be reduced by 20 percent (from the 2000 base-line). This shall result in a yearly-average total phosphorous load of 18.0 pounds per day.

**Article 6.** Based upon hydrodynamic and water quality model runs and assuming implementation of reductions identified by Articles 1 through 5, DNREC has determined that, with an adequate margin of safety, water quality standards and nutrient targets will be met in the Appoquinimink River and its tributaries and ponds.

**Article 7.** Implementation of this TMDL Regulation shall be achieved through development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with Department's Whole Basin Management Program, Appoquinimink River Tributary Action Team, and other affected parties.

**DEPARTMENT OF PUBLIC SAFETY****DIVISION OF MOTOR VEHICLES AND THE  
DIVISION OF HIGHWAY SAFETY**

Statutory Authority: 21 Delaware Code,  
Section 4177F(e) (21 Del.C. §4177F(e))

Please take notice, pursuant to 29 Del. C. Chapter 101, the Delaware Department of Public Safety proposes to promulgate a new policy regulation, number 91, to regulate the fees associated with the costs of the Ignition Interlock Program. After surveying the fees associated with similar programs in surrounding states, it became obvious that the fees in Delaware were below the industry standards. The purpose of this policy regulation is to increase the fees to an amount that is reasonable and will allow the vendors to

continue to operate at a profit in Delaware.

The Department of Public Safety will hold a hearing pursuant to 29 Del. C. Chapter 101 concerning the adoption of Policy Regulation 91, entitled "Ignition Interlock Device Installation, Removal, and Monthly Monitoring and Calibration Fees." The Department will receive public comment regarding the proposed Department of Public Safety Policy Regulation.

Department of Public Safety and Division of Highway Safety Policy Regulation Number 91 Concerning: Ignition Interlock Device Installation, Removal, and Monthly Monitoring and Calibration Fees.

**Date, Time and Place of Public Hearing**

**DATE:** November 29, 2001  
**TIME:** 10:00 a.m.  
**PLACE:** Main Conference Room, 2<sup>nd</sup> Floor  
 Department of Public Safety  
 Public Safety Building  
 303 Transportation Circle  
 Dover, DE 19901

Persons may view the proposed Policy Regulation between the hours of 8:00 a.m. to 4:00 p.m., Monday through Friday, at the Division of Highway Safety, in the Public Safety Building, 2<sup>nd</sup> floor, 303 Transportation Circle, Suite 201, Dover, DE 19901.

Persons may present their views in writing by mailing them to Lisa Moore, DUI Programs Coordinator, Division of Highway Safety, PO Box 1321, Dover, DE 19903. Written comments will be accepted until the close of business on Monday, December 3, 2001. Persons may also present their views by offering testimony at the public hearing. If the number of persons desiring to testify at the public hearing is large, the amount of time allotted to each speaker will be limited.

**Policy Regulation Number 91**  
**Concerning: Ignition Interlock Device Installation, Removal, and Monthly Monitoring and Calibration Fees.**

**I. Authority**

The authority to promulgate this regulation is 21 Del. C. §4177F(e).

**II. Purpose**

Title 21 Del.C. §4177F established a program utilizing the Ignition Interlock device for those individuals with an alcohol-related violation or offense. After surveying the fees charged by surrounding jurisdictions for similar services, this policy regulation will establish a fee schedule for all expenses related to installation and lease of the device.

**III. Applicability**

This policy regulation concerns Title 21 Del. C. §4177F.

**IV. Substance of Policy****1. Installation of Device**

All persons who voluntarily or as a result of a court order, install an Ignition Interlock device in a motor vehicle monitored in conjunction with the Division of Motor Vehicles, will be charged a fee by the provider for that service, and this fee will include the cost of removing the device at the termination of the program.

The service providers shall charge a fee not to exceed \$100.00 for installation of the Interlock device, but this amount includes a rebate of \$30.00 which will be returned to the client at the time of removal. This fee shall be the responsibility of the clients.

**2. Monthly Monitoring & Calibration**

All persons with an Ignition Interlock device installed in a vehicle monitored in conjunction with the Division of Motor Vehicles, shall be charged a fee for the monthly electronic monitoring and regular calibration of the device.

The service providers shall charge a fee not to exceed \$75.00 for monthly monitoring and calibration. This fee shall be the responsibility of the clients.

**3. Initial down Payment**

The initial payment will include the installation fee and the first month's monitoring and calibration. The initial payment, therefore, shall not exceed \$175.00 and the bi-monthly payment shall not exceed \$150.00

**4. Other Fees**

The Division of Motor Vehicles recognizes that Service providers may charge fees for other services outside the scope of this policy regulation, including but not limited to fees for missed appointments, device resets, and optional insurance programs relating to damage or loss of the device.

**5. Definition of Alcohol Related Violations and Offenses**

For purposes of this policy regulation, alcohol-related violations and offenses shall mean violations of Sections 2740, 2742, 4177, 4177B, 4175 of Title 21, conforming statutes of other states or the District of Columbia, or local ordinances in conformity therewith.

**VI. Severability**

If any part of this Regulation is held to be unconstitutional or otherwise contrary to law by a court of competent jurisdiction, said portion shall be severed and the remaining portions of this Regulation shall remain in full force and effect under Delaware law.

**VII. Effective Date**

The following regulation shall be effective 10 days from the date the order is signed and it is published in its final

form in the Register of Regulations in accordance with 29 Del. C. §10118(e).

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**DIVISION OF STATE POLICE**

Statutory Authority: 24 Delaware Code,  
Section 5404(a) (24 Del.C. §5404(a))

**Public Notice**

Notice is hereby given that the Department of Public Safety, Division of State Police, in accordance with 24 Del C Section 5404(a) proposes to adopt Rules & Regulations. These Rules & Regulations will regulate the Bounty Hunters/Bail Enforcement Agents. If you wish to view the complete Rules & Regulations, contact Ms. Peggy Anderson at (302) 739-5991. Any persons wishing to present views may submit them in writing, by November 31, 2001, to Delaware State Police, Detective Licensing, P.O. Box 430, Dover, Delaware, 19903. There will be a public hearing on Thursday, November 28, 2001, at the Public Safety Building, Main Conference Room – 2<sup>nd</sup> Floor, 303 Transportation Circle, Dover, Delaware, 19901-0818.

**Bounty Hunter/Bail Enforcement Agents****1.0 Agency Licensing**

1.1 Any and all persons, cooperative of persons, partnership, or corporation applying for an agency license under Title 24 Chapter 54 must meet and maintain the following qualifications:

1.1.1 Must not be convicted of any felony;

1.1.2 Must not have been convicted of any misdemeanor involving theft, drug offenses, offensive touching, assault III, or moral turpitude within the last seven (7) years;

1.1.3 Must not have been convicted of any charge that, in the discretion of the Detective Licensing Section, bears such a relationship to the performance of the bounty hunter/bail enforcement agent (bounty hunter); and

1.1.4 Must not have been, as a juvenile, adjudicated as delinquent for conduct which, if committed by an adult, would constitute a felony, unless and until that person has reached their 25th birthday.

1.2 An agency license will not be issued if any and all persons, cooperative of persons, partnership, or corporation has a pending charge as listed in Section 1.1.

1.3 The qualifying individual (license holder) of a cooperative of persons, partnership, or corporation applying for an agency license under Title 24 Chapter 54 must also meet the following qualifications;

1.3.1 Must be at least 25 years of age;

1.3.2 Must have at least five (5) years of

experience as a bounty hunter; and

1.3.3 Provide five (5) letters of reference attesting to their good character.

1.4 The person, cooperative of persons, partnership, or corporation applying for an agency license under Title 24 Chapter 54 must submit, to the Detective Licensing Section, the following for licensure:

1.4.1 A fee or pro-rated fee of \$360 for a two (2) year license and will expire on June 30th of even years;

1.4.2 A \$10,000 surety bond;

1.4.3 Liability Insurance in the amount of \$1,000,000;

1.4.4 Any and all applications required by the Detective Licensing Section; and

1.4.5 Submit two (2) sets of fingerprints for a Delaware (CHRI) and Federal (FBI) criminal history record check. The Director of the State Bureau of Identification (SBI) determines the fee for this process.

1.5 Any and all persons, cooperative of persons, partnership, or corporate officer must not be a member or employee of any Delaware Law Enforcement Organization, as defined by the Council on Police Training, or a member or employee of a law enforcement organization of any other local, state or federal jurisdiction.

1.6 The license issued to the agency shall be posted upon the premises of business and shall not be altered or defaced.

1.7 After issuance of an agency license, the license holder must obtain a State of Delaware business license from the Division of Revenue.

1.8 It will be the license holders' responsibility to provide to the Detective Licensing Section:

1.8.1 Any change of address, phone number, status of cooperative of persons, partnership, or corporation, in writing, within five (5) days, to the Detective Licensing Section;

1.8.2 A list of all employees by the tenth (10th) of each month as explained in Section 3.0; and

1.8.3 A list of the previous months apprehensions by the tenth (10th) of each month as explained in Section 3.0.

1.9 There will be no reciprocity with any other state regarding the licensure of a bounty hunter/bail bondsman agency.

## **2.0 Employee Licensing**

2.1 Any individual applying for a bounty hunter ID card under Title 24 Chapter 54, to work for a license holder, must meet and maintain the following qualifications:

2.1.1 Must not be convicted of any felony;

2.1.2 Must not have been convicted of any misdemeanor involving theft, any drug offenses, offensive touching, assault III, or moral turpitude within the last seven (7) years;

2.1.3 Must not have been convicted of any charge that, in the discretion of the Detective Licensing Section, bears such a relationship to the performance of the bounty hunter; and

2.1.4 Must not have been, as a juvenile, adjudicated as delinquent for conduct which, if committed by an adult, would constitute a felony, unless and until that person has reached their 25th birthday.

2.2 An individual bounty hunter ID card will not be issued if there is a pending charge as listed in Section 2.1.

2.3 The individual bounty hunter applying for an ID card under Title 24 Chapter 54 must also meet the following qualifications:

2.3.1 Must be at least 21 years of age;

2.3.2 Must complete the training qualifications set forth in Section 8.0; and/or

2.3.3 If carrying a weapon, must meet and maintain the qualifications set forth in Section 6.0.

2.4 The individual bounty hunter applying for an ID card under Title 24 Chapter 54 must submit the following for approval:

2.4.1 A fee of \$25 for a one (1) year ID card to expire on the birthday of the individual;

2.4.2 Any and all applications required by the Detective Licensing Section; and

2.4.3 Submit two (2) sets of fingerprints for a Delaware (CHRI) and Federal (FBI) criminal history record check. The Director of the State Bureau of Identification (SBI) determines the fee for this process.

2.5 If the individual bounty hunter leaves one agency's employ and is employed by another, that individual must turn in the ID card and re-apply for approval through the Detective Licensing Section, with the requirements from Section 2.4.1 and Section 2.4.2.

2.5.1 The ID cards are the property of the Delaware State Police and must be returned to the Detective Licensing Section upon leaving the employ of an agency, upon expiration of the ID card, or at the request of the Detective Licensing Section.

2.6 An individual that has a bounty hunter ID card issued through Title 24 Chapter 54 shall work for no more than two (2) licensed agencies at a time.

2.7 A bounty hunter that has been issued an ID card by the Detective Licensing Section shall be required to have such card in their possession while in the performance of his or her duties.

2.8 A bounty hunter must not be a member or employee of any Delaware Law Enforcement Organization, as defined by the Council on Police Training, or a member or employee of a law enforcement organization of any other local, state or federal jurisdiction.

2.9 There will be no reciprocity with any other state regarding the issuing of an ID card to a bounty hunter.

**3.0 Personnel Rosters and Apprehension Lists**

3.1 An agency licensed under Title 24 Chapter 54 shall submit an alphabetical personnel roster and a list of the previous months apprehensions to the Detective Licensing Section by the tenth (10th) of every month.

3.1.1 Alphabetical personnel rosters shall include any and all persons, cooperative of persons, partners, corporate officers, and individual bounty hunters. The rosters shall include the full name, DOB, sex, and expiration date. For example: Mark A. Smith 01/25/60 M 01/25/02

3.1.2 The apprehension lists shall include the name, date of birth, date, time, and address of attempted or successful apprehension. For example:

John F. Henry (Apprehended) or (Attempted Apprehension)

DOB: 05/23/48

09/23/01 9:35pm

689 Old Berry Lane

Marydel, DE

**4.0 Badges, Patches, Advertisements**

4.1 No person, cooperative of persons, partnership, or corporation licensed under Title 24 Chapter 54 shall use any type of uniform or other clothing items displaying logos, badges, patches, or any other type of writing without first being approved by the Detective Licensing Section. Under no circumstances shall any item contain the seal or crest of the State of Delaware, any state of the United States, the seal or crest of any county or local sub division, or any facsimile of the aforementioned seals or crests.

4.2 All advertisements or other forms of publication are subject to review and approval by the Detective Licensing Section.

4.3 The use of auxiliary lights, sirens, or any markings on vehicles is prohibited.

**5.0 Use of Animals**

5.1 The use of animals is prohibited in the performance of any bounty hunter activity.

**6.0 Firearms Policy**

6.1 No person licensed under Title 24 Chapter 54 shall carry a firearm unless that person has first obtained a Carrying Concealed Deadly Weapon (CCDW) permit for the State of Delaware.

6.2 In addition to possessing a CCDW permit, the individual must complete, and pass, an approved 40-hour firearm course, instructed by a certified firearm instructor, recognized by the Detective Licensing Section.

6.3 All persons licensed to carry a firearm under this chapter must be re-certified yearly by shooting a minimum of three (3) qualifying shoots a year. The shoots must be scheduled on at least two (2) separate days, with a recommended 90 days between scheduled shoots. Of the

three (3) shoots, there will be one mandatory "low light" shoot. Simulation is permitted and it may be combined with a daylight shoot. All individuals must qualify with the same type of weapon that he/she will carry. The minimum passing score is 75%.

6.4 All handguns must be either a revolver or semi-automatic and be maintained to factory specifications. Only the handguns with the following calibers are permitted:

6.4.1 9mm

6.4.2 .357

6.4.3 .38

6.4.4 .40

6.5 All ammunition will be factory fresh (no re-loads).

6.6 The carrying of any shotguns, rifles or any type of weapon that is not specifically approved by the Detective Licensing Section is PROHIBITED.

**7.0 Nightstick, Pr24, Mace, Peppergas, Chemical Spray, and Handcuffs**

7.1 To carry the above weapons/items a bounty hunter must have completed a training program on each and every weapon/item carried, taught by a certified instructor representing the manufacturer of the weapon/item. Proof of these certifications must be provided to the Detective Licensing Section. Under no circumstances would a person be permitted to carry any other type weapon/item, unless first approved by the Detective Licensing Section.

**8.0 Training**

8.1 All bounty hunters licensed under Title 24 Chapter 54 must complete a minimum, but not limited to, 21 hours of training, which must be approved by the Detective Licensing Section. The training will include, but not limited to, the following courses: Constitution/Bill of Rights, Laws of Arrest, Laws of Search & Seizure of Persons Wanted, Police Jurisdiction, Rules & Regulations of Bounty Hunters, Use of Deadly Force, Officer Survival, and Weaponless Defense.

8.2 This training will be waived for the initial licensing, but must be completed by January 19, 2003. Thereafter, the training must be completed prior to obtaining a license.

**9.0 Notification of Apprehensions**

9.1 All bounty hunters licensed under Title 24 Chapter 54 are required to notify the police emergency 911 dispatch center (i.e., Recom, Kentcom, Suscom) of the appropriate police agency in which the apprehension will be attempted.

**10.0 Notification of Arrest**

10.1 Anyone licensed under Title 24 Chapter 54 shall, excluding weekends and State holidays, notify the Detective Licensing Section within 24 hours of being arrested if that arrest could result in a misdemeanor or felony conviction. Failure to do so may result in the suspension or revocation of an agency license or individual ID card.

**11.0 Suspensions and Revocations**

11.1 The Detective Licensing Section shall have the power to suspend or revoke any agency or individual, licensed under Title 24 Chapter 54, that violates the Chapter or the promulgated Rules & Regulations.

11.2 The Detective Licensing Section may suspend or revoke any agency or individual, licensed under Title 24 Chapter 54, that has been arrested and that arrest could result in the conviction of any misdemeanor or felony as described in Sections 1.0 or 2.0.

11.3 Anyone whose license has been suspended, revoked, rejected, or denied is entitled to a hearing before the Secretary of Public Safety.

11.3.1 Anyone requesting a hearing shall notify the Detective Licensing Section, in writing, within five (5) days from the suspension, revocation, rejection, or denial and the hearing shall be scheduled at the earliest possible time.

**EXECUTIVE DEPARTMENT****DELAWARE ECONOMIC DEVELOPMENT OFFICE**

Statutory Authority: 29 Delaware Code, Section 5005(11) (29 Del. C. § 5005(11)) and 26 Delaware Code, Section 1014(a) (26 Del. C. § 1014(a))

**Delaware Economic Development Office  
Proposed Energy Alternatives Program Regulation**

In accordance with procedures set forth in 29 Del. C. Ch. 11, Subch. III and 29 Del. C. Ch. 101, the Director of the Delaware Economic Development Office is proposing to adopt a regulation entitled "Energy Alternatives Program Regulation" for the administration and operation of the Energy Alternatives Program established in 26 Del. C. § 1014(a) as part of The Electric Utility Restructuring Act of 1999. The Energy Alternatives Program is designed to introduce renewable energy technologies into the Delaware market by reducing the net system costs through the use of rebates. The proposed regulation sets forth the definition of certain terms used in the Energy Alternatives Program and describes (i) the eligibility requirements for persons desiring to receive a rebate designed to defray a part of certain purchase and installation costs of certain solar photovoltaic electricity generating systems, certain solar water heating systems, certain geothermal heat pump systems, and certain wind turbine systems (ii) the photovoltaic electricity generating, solar hot water heating, geothermal, and wind turbine systems that now qualify for rebates, (iii) how to request a rebate, (iv) how rebate requests will be evaluated and processed and the rebates disbursed, and (v) other administrative features of the Energy Alternatives Program.

**Title Of Regulation**

Energy Alternatives Program Regulation

**Nature Of Proceedings; Synopsis Of The Subject And Substance Of The Proposed Regulation**

In accordance with procedures set forth in 29 Del. C. Ch. 11, Subch. III and 29 Del. C. Ch. 101, the Director of the Delaware Economic Development Office is proposing to adopt a regulation for the administration and operation of the Energy Alternatives Program established in 26 Del. C. § 1014(a) as part of The Electric Utility Restructuring Act of 1999. The Energy Alternatives Program is designed to introduce renewable energy technologies into the Delaware market by reducing the net system costs through the use of rebates. The proposed regulation sets forth the definition of certain terms used in the Energy Alternatives Program and describes (i) the eligibility requirements for persons desiring to receive a rebate designed to defray a part of certain purchase and installation costs of certain solar photovoltaic electricity generating systems, certain solar water heating systems, certain geothermal heat pump systems, and certain wind turbine systems (ii) the photovoltaic, electricity generating, solar hot water heating, geothermal, and wind turbine systems that now qualify for rebates, (iii) how to request a rebate, (iv) how rebate requests will be evaluated and processed and the rebates disbursed, and (v) other administrative features of the Energy Alternatives Program.

**Statutory Basis And Legal Authority To Act**

29 Delaware Code, § 5005(11); 26 Del. C. § 1014(a).

**Other Regulations Affected**

None.

**Notice Of Public Hearing; How To Comment On The Proposed Regulation**

Members of the public may receive a copy of the proposed regulation at no charge by United States Mail by writing or calling Robert Propes, Delaware Economic Development Office, Carvel State Office Building, 10<sup>th</sup> Fl., 820 North French Street, Wilmington, DE, 19801-3509, phone (302) 577-8708. The Director of the Delaware Economic Development Authority, or an employee of such agency designated by the Director, will hold a public hearing at which members of the public may present comments on the proposed regulation on Thursday, December 6, 2001 in the auditorium of the Carvel State Office Building, 820 N. French Street, Wilmington, DE, 19801 from 5:00 PM to 7:00 PM. Additionally, members of the public may present written comments on the proposed regulation by submitting such written comments to Robert Propes at the address of the Delaware Economic Development Office set forth above. Written comments must be received on or before December 3, 2001.

**Energy Alternatives Program Regulation****1.0 Introduction**

This regulation is promulgated under the authority granted to the Director of the Delaware Economic Development Office ("DEDO") by 29 Del. C. § 5005(11) to make regulations for the administration and operation of DEDO. One of the programs administered by DEDO is the Energy Alternatives Program established in 26 Del. C. § 1014(a) as part of The Electric Utility Restructuring Act of 1999. The Energy Alternatives Program is designed to introduce renewable energy technologies into the Delaware market by reducing the net system costs through the use of rebates. This regulation sets forth the definition of certain terms used in the Energy Alternatives Program and describes (i) the eligibility requirements for persons desiring to participate in the program, (ii) the systems that now qualify for rebates, (iii) how to apply for a rebate, (iv) how rebate requests will be evaluated and processed and the rebates disbursed, and (v) other administrative features of the Energy Alternatives Program.

**2.0 Definitions.**

For purposes of this regulation, the following initially capitalized words and phrases shall have the meanings set forth below.

**"DEDO"** has the meaning set forth in Section 1.0 hereof.

**"DP&L Service Territory"** means the service territory of Delmarva Power and Light Company, doing business as Conectiv Power Delivery, or its successor, as such territory is reflected in the electric service territory maps maintained by the Delaware Public Service Commission under the authority of 26 Del. C. § 203B.

**"Conectiv Power Delivery"** means the trade name used by Delmarva Power and Light Company.

**"Eligible Qualifying Geothermal Heat Pump System Costs"** has the meaning set forth in Section 3.4.3 hereof.

**"Eligible Qualifying Photovoltaic System Costs"** has the meaning set forth in Section 3.2.4 hereof.

**"Eligible Qualifying Solar Water Heating Costs"** has the meaning set forth in Section 3.3.4 hereof.

**"Eligible Qualifying Wind Turbine System Costs"** has the meaning set forth in Section 3.5.4 hereof.

**"Energy Alternatives Program"** has the meaning set forth in Section 1.0 hereof.

**"Energy Alternatives Program Manager"** means the State Energy Office employee whose duties include consultation with DEDO in the management and administration of the Environmental Incentive Fund, and the Energy Alternatives Program.

**"Energy Alternatives Rebate"** for Photovoltaic, Solar Water Heating and Wind Turbine systems means, except as provided hereafter, 35% of Eligible Qualifying Photovoltaic

System Costs, Eligible Qualifying Solar Water Heating System Costs, or Eligible Qualifying Wind Turbine System Costs, as the case may be, is subject to the following limitations: if the Qualifying System is to be used by a Nonresidential Purchaser, an Energy Alternatives Rebate shall not exceed \$250,000; if the Qualifying System is a Photovoltaic system to be used by a Residential Purchaser, an Energy Alternatives Rebate shall not exceed \$10,500 per Residential Dwelling Unit; if the Qualifying System is to be used by a Residential Purchaser for Solar Water Heating, an Energy Alternatives Rebate shall not exceed \$1,500 per Residential Dwelling Unit; if the Qualifying System is to be used by a Residential Purchaser for a Wind Turbine System, an Energy Alternatives Rebate shall not exceed \$5,000 per Residential Dwelling Unit. Energy Alternative Rebate for a Geothermal Heat Pump system means the lesser of 35% of the Eligible Qualifying Geothermal Heat Pump System Costs difference between the installed cost of the Geothermal Heat Pump System and a conventional heating/air-conditioning alternative (air-source heat pump, air-cooled or water-cooled unitary air-conditioning equipment and/or gas- or oil-fired heating equipment) of equal heating and cooling capacity, or \$500 per Ton of Capacity. An Energy Alternative Rebate for a Nonresidential Geothermal Heat Pump system shall not exceed \$25,000. An Energy Alternative Rebate for a Residential Geothermal Heat Pump system shall not exceed \$2,500.

**"Environmental Incentive Fund"** means the fund established by 26 Del. C. § 1014(a) and administered by the Delaware Economic Development Office, in consultation with the State Energy Office and the Division of Public Advocate.

**"Fiscal Year"** means the budget and accounting year of the State beginning on July 1 and ending on June 30. Reference to a Fiscal Year by year number means the Fiscal Year ending on June 30 of the named year. For example, a reference to Fiscal Year 2001 means the period beginning on July 1, 2000 and ending on June 30, 2001.

**"Freeze Tolerance Limit"** means the temperature below which a Qualifying System for Solar Water Heating might suffer damage attributable to freezing.

**"Geothermal Heat Pump"** means - either an open or closed loop system, or direct expansion system that uses the thermal energy of the ground or groundwater as the heat source and heat sink for residential or non-residential space heating and/or cooling. It may provide both space heating and cooling, cooling only or heating only functions. A closed loop system consists of a ground heat exchanger in which the heat transfer fluid is permanently contained in a closed system. An open loop system consists of a ground heat exchanger in which the heat transfer fluid is part of a larger environment. A direct expansion system consists of a geothermal heat pump system in which the refrigerant is circulated in pipes buried in the ground, rather than using a

heat transfer fluid, such as water or antifreeze solution in a separate closed loop, and fluid to refrigerant heat exchanger.

**“Grid-connected”, “Grid-tied” or “Interconnected”** means a condition in which a Qualifying System that is an electrical generating system serves and is electrically connected to an electrical load that is also connected to and served by the local utility electrical grid. The delivery, or ability to deliver, any portion of the generating capacity into the utility electrical grid is not required, nor must the loads served be only alternating current loads. The Photovoltaic or Wind Turbine system need only to be capable of serving electrical loads that would otherwise be served by the local utility.

**“Kilowatt”** means 1,000 Watts.

**“Kilowatt-hour”** means the basic unit of electric energy equal to one Kilowatt of power supplied to or taken from an electric circuit steadily for one hour. One-Kilowatt hour equals 1,000 Watt-hours. Electric energy is commonly sold by the Kilowatt-hour.

**“Nonresidential”** means all classes of customer purchasing electric power for uses other than for individual households. These groups of customers generally purchase electric power for commercial and industrial purposes. When used as an adjective with respect to Qualified Systems or Energy Alternatives Rebates, such term refers to systems owned by, or leased to, or rebates granted to Nonresidential persons.

**“Nonresidential List”** has the meaning set forth in Section 4.2.2 hereof.

**“Nonresidential Pool”** has the meaning set forth in Section 4.1.1.3 hereof.

**“Photovoltaic”** means a nonmechanical semiconductor device, most commonly made of silicon, that produces direct current (dc) electricity.

**“Placed in Service”** means installed, operational and producing output.

**“Program Documentation Checklist”** means the “Energy Alternatives Program Documentation Checklist (EO-1000)” or other form prescribed by the State Energy Office for the same purpose.

**“Purchaser”** means the purchaser or lessee of a Qualifying System.

**“Qualifying System”** has the meaning set forth in Section 3.0 hereof.

**“Rebate Confirmation and Claim Form”** means the “Energy Alternatives Program Rebate Confirmation and Claim Form (EO-1002)” or other form prescribed by the State Energy Office for the same purposes.

**“Rebate Reservation”** means the reservation of the amount of a requested Energy Alternatives Rebate against the previously unreserved funds within the Nonresidential Pool or the Residential Pool of the Environmental Incentive Fund available for Energy Alternatives Rebates in accordance with Section 4.2.3 hereof.

**“Rebate Reservation Number”** has the meaning set forth in Section 4.2.2 hereof.

**“Rebate Reservation Request”** means the request of a Purchaser for the reservation of an Energy Alternatives Rebate made in accordance with the procedures specified in Section 4.2 hereof.

**“Rebate Reservation Request Form”** means the “Energy Alternatives Program Rebate Reservation Request Form -- Photovoltaic (EO 1001PV)”, the “Energy Alternatives Program Rebate Reservation Request Form -- Solar Water Heating (EO 1001SWH)”, the “Energy Alternatives Program Rebate Reservation Request Form -- Geothermal (EO 1001GEO)”, the “Energy Alternatives Program Rebate Reservation Request Form -- Wind Turbine (EO 1001WT)”, or such other form prescribed by the State Energy Office for making a Rebate Reservation Request pursuant to Section 4.2 hereof.

**“Residential”** means the class or classes of customers purchasing electric power for household uses. When used as an adjective with respect to Qualified Systems or Energy Alternatives Rebates, such term refers to systems owned by, or leased to, or rebates granted to Residential persons.

**“Residential Dwelling Unit”** means a single-family house, whether free-standing or attached to one or more other houses, or an apartment. A Residential Dwelling Unit must be separately metered for purposes of measuring electricity consumption.

**“Residential List”** has the meaning set forth in Section 4.2.2 hereof.

**“Residential Pool”** has the meaning set forth in Section 4.1.1.3 hereof.

**“Retailer”** means the vendor or lessor of a Qualifying System.

**“Solar Water Heating”** means the heating of water by use of the sun’s energy rather than electricity or gas.

**“State”** means the State of Delaware.

**“Ton of Capacity”** means 12,000 British Thermal Units (BTU) per hour of capacity.

**“Vendor Data Form”** means the “Energy Alternatives Program Vendor Data Form” or other form prescribed by the State Energy Office for the same purpose.

**“Watt”** means the basic unit of measure of real electric power, or rate of doing work.

**“Watt-hour”** means the basic unit of measure of electric energy consumption. The total amount of energy used in one hour by a device that requires one Watt of power for continuous operation.

**“Wind Turbine”** means a mechanical/electrical system that converts the kinetic energy of blowing wind into electric power.

### 3.0 Qualifying System

3.1 In General. A Qualifying System must be located within the DP&L Service Territory, and the Purchaser must

be a customer of Conectiv Power Delivery. Only Photovoltaic, Solar Water Heating, Geothermal Heat Pump and Wind Turbine systems may constitute Qualifying Systems.

3.1.1 Code Compliance; Contractor Licensing. All Qualifying Systems must be installed in accordance with standards and specifications of the manufacturers of the components in such systems and in compliance with all applicable electrical, plumbing and building codes.

3.1.2 Warranties. All Qualifying Systems must have a full 5-year warranty against component failure, malfunction and premature output degradation. The warranty must cover all components for which the Energy Alternatives Rebate is granted and cover the full cost of repair and replacement of all components of the system. For professionally installed systems, the warranty must cover the labor to remove and replace defective components and systems.

### 3.2 Photovoltaic Systems.

3.2.1 Capacity. In order to be a Qualifying System, Photovoltaic systems must have an expected annual system output that does not exceed the historic or current electricity needs of the Purchaser at the installation site. Qualifying Systems must produce at least 300 Watts. For Qualifying Systems producing more than 10,000 Watts (i.e., 10 Kilowatts), the Energy Alternatives Program Manager may require additional evidence of feasibility with the Rebate Reservation Request Form. If the installation site is new construction, the expected annual system output must not exceed the estimated building electrical needs, as set forth in the Conectiv Power Delivery service request with respect to the installation site submitted by the Purchaser.

3.2.2 Technical Standards. All photovoltaic modules must be certified by a nationally recognized testing laboratory as meeting the requirements of the Underwriters Laboratory Standard 1703. All qualifying grid-connected systems must comply with and the Institute of Electrical and Electronic Engineers Standards Board (IEEE) 929, *Recommended Practice for Utility Interface of Photovoltaic (PV) Systems* and the appropriate generation interconnection arrangements of Conectiv Power Delivery's, *Technical Considerations Covering Parallel Operations of Customer Owned Generation of Less than 1 Megawatt and Interconnected with the Conectiv Power Delivery System*. Conectiv's generation interconnection documents are available on the Division of the Public Advocate's web site at [www.state.de.us/publicadvocate](http://www.state.de.us/publicadvocate). All inverters must be certified by a nationally recognized testing laboratory for safe operation as well as be certified as meeting the requirements of Underwriters Laboratory Standards 1741-1999, *Standard for Static Inverters and Charge Controllers for Use in Photovoltaic Power Systems*.

3.2.3 Cost Limitations. A Photovoltaic system may not have Eligible Qualifying Photovoltaic System Costs

in excess of \$12 per Watt.

3.2.4 Eligible Qualifying Photovoltaic System Costs. "Eligible Photovoltaic Qualifying System Costs" means (i) the sum of costs of the components of a Qualifying System that are used to convert sunlight to electricity, the labor costs for the installation of such components, the cost of required permits and fees for the construction or installation of a Qualifying System and, in the case of a Qualifying System to be used by a Nonresidential Purchaser, engineering costs associated with such system not to exceed 10% of the total cost of such system; minus, (ii) all other incentives associated with such Qualifying System and received by the Purchaser, including grants, rebates, buy downs cost sharing or any similar form of financial incentive other than a federal income tax credit. In order to be counted toward Eligible Qualifying System Costs, components of a Qualifying System must be new and previously unused. Examples of the components of a Qualifying System that is Photovoltaic, the costs of which may be counted toward Eligible Qualifying System Costs, are the photovoltaic module, the foundation for such photovoltaic module, mounting or tracking structures and wiring, inverters and utility interconnection equipment. Components that are energy storage equipment may not be counted toward Eligible Qualifying System Costs.

### 3.3 Solar Water Heating

3.3.1 Capacity. In order to be a Qualifying System a Solar Water Heating system must have a minimum combined tank capacity of 80 gallons. A Solar Water Heating system must be designed to reduce or eliminate the need for electric or gas-heated hot water.

3.3.2 Technical Standards. All Qualifying Systems that are Residential Solar Water Heating systems must be certified to meet the Solar Rating and Certification Corporation's (SRCC) OG- 300, *Operating Guidelines and Minimum Standards for Certifying Solar Water Heating Systems: An Optional Solar Water Heating System Certification and Rating Program* and have a Freeze Tolerance Limit of minus 21 degrees Fahrenheit without electrical power. All Qualifying Systems that are Nonresidential Solar Water Heating systems must utilize collectors certified to meet the Solar Rating and Certification Corporation's (SRCC) OG-100, *Operating Guidelines for Certifying Solar Collectors*.

3.3.3 Cost Limitations. A Solar Water Heating system may not have Eligible Qualifying Solar Water Heating System Costs in excess of \$2.50 per Kilowatt-Hour of annual energy savings, as estimated by the Solar Rating and Certification Corporation's (SRCC) OG-300 *Estimated Annual Performance* document.

3.3.4 Eligible Qualifying Solar Water Heating System Costs. "Eligible Qualifying Solar Water Heating System Costs" means (i) the sum of costs of the components of a Qualifying System that are used to convert sunlight to

heated water, the labor costs for the installation of such components, the cost of required permits and fees for the construction or installation of a Qualifying System and, in the case of a Qualifying System to be used by a Nonresidential Purchaser, engineering costs associated with such system not to exceed 10% of the total cost of such system; minus, (ii) all other incentives associated with such Qualifying System and received by the Purchaser, including grants, rebates, buy downs cost sharing or any similar form of financial incentive other than a federal income tax credit. In order to be counted toward Eligible Qualifying System Costs, components of a Qualifying System must be new and previously unused. Examples of the components of a Qualifying System for Solar Water Heating, the costs of which may be counted toward Eligible Qualifying System Costs, are collectors, mounting components, storage tanks, circulators, controllers, timers, heat exchangers, expansion tanks, piping and insulation. Components that are point of use heating devices or solar pool heating equipment may not be counted toward Eligible Qualifying System Costs.

### 3.4 Geothermal Heat Pump

3.4.1 Capacity. In order to be a Qualifying System a Geothermal Heat Pump must be sized in accordance with good heating, ventilation and air conditioning design practices for the occupancy and location. Vendor shall provide a Manual J calculation, or other equivalent calculation, to determine proper size of equipment.

3.4.2 Technical Standards. All Qualifying Systems must have a warranty for protection of the integrity and performance of the ground heat exchanger for at least five years. All Qualifying Systems must meet the following:

- Closed loop systems shall qualify under rating conditions in accordance with ISO 13256-1.
- Open loop systems shall qualify under rating conditions in accordance with ISO 13256-1.
- DX systems shall qualify under rating conditions in accordance with ARI 870.

3.4.3 Eligible Qualifying Geothermal Heat Pump System Costs. "Eligible Qualifying Geothermal Heat Pump System Costs" means (i) the sum of costs of the components of a Qualifying System that are used to collect and/or reject heat to the ground or groundwater, the labor costs for the installation of such components, the cost of required permits and fees for the construction or installation of a Qualifying System and, in the case of a Qualifying System to be used by a Nonresidential Purchaser, engineering costs associated with such system not to exceed 10% of the total cost of such system; minus, (ii) all other incentives associated with such Qualifying System and received by the Purchaser, including grants, rebates, buy downs cost sharing or any similar form of financial incentive other than a federal income tax credit. In order to be counted toward Eligible Qualifying System

Costs, components of a Qualifying System must be new and previously unused. Examples of the components of a Qualifying System for Geothermal Heat Pump systems, the costs of which may be counted toward Eligible Qualifying System Costs, are wells and well drilling, in-ground piping and heat exchanger loops and excavation for such piping and loops, circulating pumps, controllers, timers, heat exchangers, expansion tanks, piping and insulation. Vapor-compression heat pump units, air handling units, fans, ductwork, filter systems, and other fluid and air handling system components are excluded.

### 3.5 Wind Turbine

3.5.1 Capacity. In order to be a Qualifying System, Wind Turbine systems must not have an expected annual system output that does not exceed the historic or current electricity needs of the Purchaser at the installation site. The Energy Alternatives Program Manager may require additional evidence of feasibility with the Rebate Reservation Request Form. The Energy Alternatives Program Manager may also reject applications if the location of the proposed Wind Turbine System has an inadequate wind resource for reasonable utilization of the equipment. If the installation site is new construction, the expected annual system output must not exceed the estimated building electrical needs, as set forth in the Conectiv Power Delivery service request with respect to the installation site submitted by the Purchaser.

3.5.2 Technical Standards. All qualifying grid-connected systems must comply with the Institute of Electrical and Electronic Engineers Standards Board (IEEE) 929, *Recommended Practice for Utility Interface of Photovoltaic (PV) Systems* and the appropriate generation interconnection arrangements of Conectiv Power Delivery's, *Technical Considerations Covering Parallel Operations of Customer Owned Generation of Less than 1 Megawatt and Interconnected with the Conectiv Power Delivery System*. Conectiv's generation interconnection documents are available on the Division of the Public Advocate's web site at [www.state.de.us/publicadvocate](http://www.state.de.us/publicadvocate). All inverters must be certified by a nationally recognized testing laboratory for safe operation as well as be certified as meeting the requirements of Underwriters Laboratory Standards 1741-1999, *Standard for Static Inverters and Charge Controllers for Use in Photovoltaic Power Systems*.

3.5.3 Cost Limitations. A Wind Turbine system may not have Eligible Qualifying Wind Turbine System Costs in excess of \$5.00 per Watt.

3.5.4 Eligible Qualifying Wind Turbine System Costs. "Eligible Qualifying Wind Turbine Systems Costs" means (i) the sum of costs of the components of a Qualifying System that are used to convert wind energy to electricity, the labor costs for the installation of such components, the cost of required permits and fees for the construction or installation of a Qualifying System and, in the case of a

Qualifying System to be used by a Nonresidential Purchaser, engineering costs associated with such system not to exceed 10% of the total cost of such system; minus, (ii) all other incentives associated with such Qualifying System and received by the Purchaser, including grants, rebates, buy downs cost sharing or any similar form of financial incentive other than a federal income tax credit. In order to be counted toward Eligible Qualifying System Costs, components of a Qualifying System must be new and previously unused. Examples of the Wind Turbine System components of a Qualifying System, the costs of which may be counted toward Eligible Qualifying System Costs, are the wind turbine-generator assembly, tower, tower foundations, other support structure components, wiring, inverters and utility interconnection equipment. Components that are energy storage equipment may not be counted toward Eligible Qualifying System Costs.

#### **4.0 Energy Alternatives Rebate Reservation and Payment Procedure**

##### 4.1 Availability of Funds; Duration of Program.

###### 4.1.1 In General.

4.1.1.1 Program Duration. Energy Alternatives Rebates will be available on the effective date of this regulation. DEDO may, however, modify or suspend the Energy Alternatives Program and the criteria for, or availability of Energy Alternatives Rebates. Such action shall be taken in consultation with the State Energy Office and the Division of the Public Advocate.

4.1.1.2 Funds Available. The availability of any amount for Energy Alternatives Rebates will depend entirely upon whether sufficient unencumbered funds are available in the Environmental Incentive Fund at the beginning of a Fiscal Year, or are deposited pursuant to 26 Del.C. § 1014(a) into the Environmental Incentive Fund pursuant to Section 4.1.1.5 hereof during such Fiscal Year. DEDO can give no assurance that any funds will be available for Energy Alternatives Rebates.

4.1.1.3 Allocation of Environmental Incentive Fund for Nonresidential and Residential Energy Alternatives Rebates. On the effective date of this regulation, DEDO will allocate sixty percent (60%) of the Environmental Incentive Fund for the funding of Nonresidential Energy Alternatives Rebates (the "Nonresidential Pool") and forty percent (40%) of the Environmental Incentive Fund for the funding of Residential Energy Alternatives Rebates (the "Residential Pool"). DEDO will allocate all funds received in the Environmental Incentive Fund after the effective date of this regulation in the same proportion into the Nonresidential Pool or the Residential Pool.

4.1.1.4 Carryforwards. At the end of each Fiscal Year amounts in the Nonresidential Pool and the Residential Pool shall carry forward into the next Fiscal Year within the same pool.

4.1.1.5 Waiting List. If, at any time, the State Energy Office has made Rebate Reservations within the Nonresidential Pool or the Residential Pool of all funds in such pool, the State Energy Office will not disburse further Energy Alternatives Rebates from such pool, unless and until additional funds become available in such pool; however, it will continue to accept, evaluate and classify Rebate Reservation Request Forms and will continue to assign Rebate Reservation Numbers to Rebate Reservation Requests in accordance with Section 4.2.2. If additional funds become available within a pool for Energy Alternatives Rebates, the State Energy Office will process such rebates in the order of the Rebate Reservation Numbers in either the Nonresidential List or the Residential List, as the case may be, assigned to Rebate Reservation Requests. There can be no assurance that additional funds for Energy Alternatives Rebates will become available. Rebate Reservation Requests that have been assigned Rebate Reservation Numbers, but for which funds are unavailable at any time at which the Director of DEDO decides to suspend the Energy Alternatives Program shall lapse, and the persons who submitted such Rebate Reservation Requests shall have no right to receive any funds from the State with respect to their Rebate Reservation Requests.

4.1.2 Special Rule for Qualifying Systems Placed in Service during Fiscal Year 2001. Purchasers of Qualifying Systems Placed in Service during Fiscal Year 2001 may apply for an Energy Alternatives Rebate even though they were unable to submit Rebate Reservation Request Forms until after the end of Fiscal Year 2001.

##### 4.2 Rebate Reservation Procedure.

4.2.1 Submission of Rebate Reservation Request Form. Purchasers or Retailers may submit a Rebate Reservation Request Form to the State Energy Office at the address set forth hereafter. The Rebate Reservation Request Form (i) must be on the appropriate Rebate Reservation Request Form for the type of Qualifying System being installed, (ii) must provide all requested information, (iii) must be accompanied by all required accompanying documentation specified in the Program Documentation Checklist, and (iv) must be signed by the Purchaser. A Nonresidential Purchaser who proposes to construct either a Qualifying Photovoltaic System or a Qualifying Wind Turbine System with a capacity exceeding 10 Kilowatts, or a Qualifying Geothermal Heat Pump System, and who intends to request a 12-month Rebate Reservation in accordance with Section 4.2.3 hereof shall also submit preliminary plans and a project schedule so that the State Energy Office can determine the feasibility of the system. It is the responsibility of the Purchaser to ensure that a Rebate Reservation Request Form is accurate, complete and contains all required accompanying documentation. Rebate Reservation Request Forms and accompanying documentation shall be submitted to the following address:

State Energy Office  
Attention: Energy Alternatives Program Manager  
149 Transportation Circle  
Dover, DE 19901

4.2.2 State Energy Office Processing of Rebate Reservation Request Form; Assignment of Rebate Reservation Numbers within Nonresidential Pool or Residential Pool. The State Energy Office will review and evaluate the Rebate Reservation Request Form and the accompanying documentation for accuracy, completeness (including all required accompanying documentation) and eligibility of the proposed project as a Qualifying System. In making its evaluation of the Rebate Reservation Request Form and accompanying documentation and in determining whether the proposed project is a Qualifying System, the State Energy Office may request further information, or inspect the site of the proposed project. The State Energy Office shall reject any Rebate Reservation Request, if the Rebate Reservation Request Form is not accurate or complete (including all required accompanying documentation), or if the proposed project is not a Qualifying System, and shall notify the Purchaser of such rejection in writing. After the State Energy Office completes its review of a Rebate Reservation Request Form and all required accompanying documentation and if it determines (i) that such submitted forms are accurate and complete (including all required accompanying documentation) and (ii) that the project being proposed is a Qualifying System, the State Energy Office shall take the following actions: First, it will classify each Rebate Reservation Request as a request to be reserved against the Nonresidential Pool or the Residential Pool, depending on whether the Rebate Reservation Request describes a Nonresidential or a Residential Qualifying System and assign such Rebate Reservation Request to a list of Nonresidential Rebate Reservation Requests (the "Nonresidential List") or a list of Residential Rebate Reservation Requests (the "Residential List"). Second, it will assign a unique consecutive number to each such Rebate Reservation Request within either the Nonresidential List or the Residential List based on the chronological order of the date on which such form was submitted in complete form (a "Rebate Reservation Number").

4.2.3 Reservation of Energy Alternatives Rebate. When the State Energy Office assigns a Rebate Reservation Number to a Rebate Reservation Request, provided that sufficient previously unreserved funds are available for Energy Alternatives Rebates in the Nonresidential Pool (in the case of Nonresidential Rebate Reservation Requests) or the Residential Pool (in the case of Residential Rebate Reservation Requests), the State Energy Office shall reserve the amount of the Energy Alternatives Rebate so requested (subject to the applicable limitations) against the funds in the

Nonresidential Pool (in the case of Nonresidential Rebate Reservation Requests) or the Residential Pool (in the case of Residential Rebate Reservation Requests) (a "Rebate Reservation"). A Rebate Reservation shall be valid for six months from the date on which the State Energy Office makes such Rebate Reservation. If the Purchaser with respect to a Nonresidential Photovoltaic Qualifying System, or a Nonresidential Wind Turbine Qualifying System with a capacity exceeding 10 Kilowatts, or a Nonresidential Geothermal Heat Pump Qualifying System makes a written request therefor, the State Energy Office may, after such further investigation of the proposed project as it deems necessary, extend the validity of the Rebate Reservation to twelve months from the date on which the State Energy Office made such Rebate Reservation. When a Rebate Reservation expires, it shall be of no further effect and the Rebate Reservation Request with respect to which it was made shall be deemed to have been rejected as of such expiration date. If the State Energy Office has assigned a Rebate Reservation Number to a Rebate Reservation Request but was unable to make a Rebate Reservation because of the unavailability of funds for such purpose within the Nonresidential Pool (in the case of Nonresidential Rebate Reservation Requests) or the Residential Pool (in the case of Residential Rebate Reservation Requests), and if funds within the applicable pool sufficient to make such Rebate Reservation subsequently become available, the State Energy Office shall make the Rebate Reservation when such funds become available. Promptly after making a Rebate Reservation, the State Energy Office shall inform the Purchaser who made the Rebate Reservation Request of the amount of the Rebate Reservation and the date on which such Rebate Reservation expires by mailing a Rebate Confirmation and Claim Form to the Purchaser.

4.2.4 Modification of Rebate Reservation Request. A Purchaser may request in writing a modification of a Rebate Reservation Request at any time prior to the disbursement of the Energy Alternatives Rebate requested. A request for a modification of a Rebate Reservation Request, other than a minor modification, will be treated as a new Rebate Reservation Request, and the State Energy Office will evaluate the request for modification as such. The State Energy Office will exercise its discretion in determining whether a requested modification is considered "minor." Upon receipt of a request for modification of a Rebate Reservation Request that the State Energy Office does not consider minor, any prior Rebate Reservation made by the State Energy Office with respect to the Rebate Reservation Request sought to be modified will expire. The State Energy Office will evaluate the modified request. If it determines (i) that the modified Rebate Reservation Request Form and any accompanying documentation are accurate and (ii) that the modified project being proposed is a Qualifying System, the State Energy Office shall assign a

new Rebate Reservation Number to the modified Rebate Reservation Request and proceed in accordance with Section 4.2.3.

4.3. Claim for and Disbursement of Energy Alternatives Rebate. If the State Energy Office makes a Rebate Reservation with respect to a Rebate Reservation Request Form, after the Qualifying System described in such Rebate Reservation Request Form has been Placed in Service and prior to the expiration date of such Rebate Reservation, the Purchaser may request disbursement of the Energy Alternatives Rebate that was the subject of the Rebate Reservation by submitting to the State Energy Office at the address set forth in Section 4.2.1 a copy of the Rebate Confirmation and Claim Form that the State Energy Office sent to the Purchaser after assigning a Rebate Reservation Number. The Purchaser must complete the section of the Rebate Confirmation and Claim Form entitled "Rebate Claim Form" together with all documentation required by the Program Documentation Checklist to accompany such Rebate Confirmation and Claim Form. The State Energy Office must receive the Rebate Confirmation and Claim Form and all accompanying documentation prior to the expiration date of the Rebate Reservation specified in the Rebate Confirmation and Claim Form. The State Energy Office will evaluate the Rebate Confirmation and Claim Form and the required accompanying documentation. In performing such evaluation, the State Energy Office may make an inspection of the installed system. If there are only minor modifications to the Rebate Reservation Request or the Qualifying System, as Placed in Service, that are described in the Rebate Confirmation and Claim Form, the State Energy Office will process payment of the Energy Alternatives Rebate within 30 days of receipt of the Rebate Confirmation and Claim Form. The State Energy Office will ordinarily request DEDO to pay the Energy Alternatives Rebate to the Purchaser; however, if the Purchaser so requests in writing, the State Energy Office will request DEDO to pay the Energy Alternatives Rebate to the Retailer. If modifications to the Rebate Reservation Request or the Qualifying System, as Placed in Service, that are described in the Rebate Confirmation and Claim Form are deemed by the State Energy Office to be other than minor, the Rebate Confirmation and Claim Form will be treated as a request for modification of the original Rebate Reservation Request and processed in accordance with Section 4.2.3 and 4.2.4.

4.4 Maintenance of Balances of Nonresidential Pool and Residential Pool within the Environmental Incentive Fund Available for Energy Alternatives Rebates. When the State Energy Office makes a Rebate Reservation pursuant to Section 4.2.3 hereof, the funds within either the Nonresidential Pool or the Residential Pool (as the case may be) of the Environmental Incentive Fund that have been set aside for Energy Alternatives Rebates shall be reduced by the amount of such Rebate Reservation. Whenever a Rebate

Reservation expires in accordance with Section 4.2.3 or Section 4.2.4 hereof without the corresponding Energy Alternatives Rebate's having been disbursed in accordance with Section 4.3 hereof, the funds within either the Nonresidential Pool or the Residential Pool of the Environmental Incentive Fund that have been set aside as available for Energy Alternatives Rebates shall be increased by the amount of such expired undisbursed Rebate Reservation.

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Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. [**Bracketed Bold language**] indicates text added at the time the final order was issued. [~~Bracketed stricken through~~] indicates language deleted at the time the final order was issued.

Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
REAL ESTATE COMMISSION**  
24 DE Admin. Code 2900  
Statutory Authority: 24 Delaware Code,  
Section 2905(a)(1), (24 Del.C. §2905(a)(1))

**Order Adopting Rules and Regulations**

AND NOW, this 11th day of October, 2001, in accordance with 29 *Del.C.* § 10118 and for the reasons stated hereinafter, the Real Estate Commission of the State of Delaware (hereinafter "the Commission") enters this Order adopting amendments to Rules and Regulations.

**I. Nature of the Proceedings**

Pursuant to the Commission's authority under 24 *Del.C.* § 2905(a)(1), the Commission proposed to revise its existing Rules and Regulations to revise and clarify the rules and regulations regarding escrow accounts by inserting a new rule addressing the requirements for transfer of fees or specified amounts when the real estate transaction is a non-recurring residential rental agreement of less than one hundred twenty (120) days. The Commission's proposal to revise the rules and regulations resulted from a request for rulemaking pursuant to 29 *Del.C.* § 10114 initiated by

Robert G. Gibbs, Esquire. Notice of the public hearing to consider the proposed amendments to the Rules and Regulations was published in the Delaware *Register of Regulations* dated August 1, 2001, and two Delaware newspapers of general circulation, in accordance with 29 *Del.C.* § 10115. The public hearing was held on September 13, 2001 at 9:00 a.m. in Dover, Delaware, as duly noticed, and at which a quorum of the Commission was present. The Commission deliberated and voted on the proposed revisions to the Rules and Regulations. This is the Commission's Decision and Order ADOPTING the amendments to the Rules and Regulations as proposed.

**II. Evidence and Information Submitted**

The Commission received no written comments in response to the notice of intention to adopt the proposed revisions to the Rules and Regulations. No public comment was received at the September 13, 2001 hearing regarding the proposed revisions.

**III. Findings of Fact and Conclusions**

1. The public was given notice of the proposed amendments to the Rules and Regulations and offered an adequate opportunity to provide the Commission with comments.
2. The proposed amendments to the Rules and Regulations are necessary to clarify the requirements for

transfers of amounts in an escrow account when the real estate transaction is a non-recurring residential rental agreement of less than one hundred twenty (120) days. The proposed amendments will assist licensees in understanding their responsibilities regarding escrow accounts and will also provide protection to the public.

3. The Commission concludes that it has statutory authority to promulgate rules and regulations pursuant to 24 *Del.C.* § 2905(a)(1).

4. For the foregoing reasons, the Commission concludes that it is necessary to adopt amendments to its Rules and Regulations, and that such amendments are in furtherance of its objectives set forth in 24 *Del.C.* Chapter 29.

#### **IV. Decision and Order to Adopt Amendments**

NOW, THEREFORE, by unanimous vote of a quorum of the Commission, **IT IS ORDERED**, that the Rules and Regulations are approved and adopted in the exact text as set forth in Exhibit A attached hereto. The effective date of this Order is ten (10) days from the date of its publication in the Delaware *Register of Regulations* pursuant to 29 *Del.C.* § 10118(g).

#### **By Order of the Real Estate Commission (As authenticated by a quorum of the Commission)**

Mary B. Parker, Chairperson, Public Member  
Marvin R. Sachs, Vice Chairperson,  
Professional Member  
Joseph P. Connor, Jr., Secretary, Professional Member  
Ann K. Baker, Professional Member  
Judy L. Bennett, Public Member  
John R. Giles, Professional Member  
James D. McGinnis, Professional Member  
Marcia Shihadeh, Public Member

**\* Note: No changes were made to the regulation as originally proposed and published in the August 2001 issue of the Register at page 231 (5 DE Reg. 231). Therefore, the final regulation is not being republished. Please refer to the August 2001 issue of the Register or contact the Real Estate Commission.**

#### **DIVISION OF PROFESSIONAL REGULATION**

#### **REAL ESTATE COMMISSION**

24 DE Admin. Code 2925

Statutory Authority: 24 Delaware Code,  
Section 2905(a)(1), 2911(b)  
(24 **Del.C.** §2905(a)(1), §2911(b))

#### **Order Adopting Guidelines for Fulfilling The Delaware Real Estate Education Requirements**

AND NOW, this 11th day of October, 2001, in accordance with 29 *Del.C.* § 10118 and for the reasons stated hereinafter, the Real Estate Commission of the State of Delaware (hereinafter "the Commission") enters this Order adopting amendments to its Guidelines for Fulfilling the Delaware Real Estate Education Requirements.

#### **I. Nature of the Proceedings**

Pursuant to the Commission's authority under 24 *Del.C.* §§ 2905(a)(1), and 2911(b), the Commission proposed to revise its existing Guidelines for Fulfilling the Delaware Real Estate Education Requirements to revise and clarify the education guidelines regarding program criteria to reflect the approval of courses that have been certified through the Association of Real Estate License Law Officials Distance Education Certification Program. Notice of the public hearing to consider the proposed amendments to the Guidelines for Fulfilling the Delaware Real Estate Education Requirements was published in the Delaware *Register of Regulations* dated August 1, 2001, and two Delaware newspapers of general circulation, in accordance with 29 *Del.C.* §10115. The public hearing was held on September 13, 2001 at 9:30 a.m. in Dover, Delaware, as duly noticed, and at which a quorum of the Commission was present. The Commission deliberated and voted on the proposed revisions to the Guidelines for Fulfilling the Delaware Real Estate Education Requirements. This is the Commission's Decision and Order ADOPTING the amendments to the Guidelines for Fulfilling the Delaware Real Estate Education Requirements as proposed.

#### **II. Evidence and Information Submitted**

The Commission received no written comments in response to the notice of intention to adopt the proposed revisions to the Guidelines for Fulfilling the Delaware Real Estate Education Requirements. At the September 13, 2001 hearing, public comment was received from Eugene Millman and John Osborne regarding the proposed revisions. Mr. Millman indicated that he and Mr. Osborne were present to give support to the proposed revisions dealing with the Association of Real Estate License Law

Officials' ("ARELLO") certification of distance learning programs and expressed their belief that such amendments comprise movement in the right direction. Notwithstanding general support of the proposed revisions, Mr. Osborne stated that in his view the proposed phrasing of Guideline 6.1.2.3 is confusing, and he recommended that an entirely new and separate rule be drafted that would stand alone elsewhere in the guidelines. In his opinion, the proposed Guideline is unclear and potentially subject to varying interpretation by members of the Real Estate Education Committee of which he is a member.

### III. Findings of Fact and Conclusions

1. The public was given notice of the proposed amendments to the Guidelines for Fulfilling the Delaware Real Estate Education Requirements and offered an adequate opportunity to provide the Commission with comments. The Commission considered the comments received from the public, and determined that it was desirable to adopt the proposed amendments as written.

2. The proposed amendments to the Guidelines for Fulfilling the Delaware Real Estate Education Requirements are necessary to clarify that courses that have been certified through ARELLO's Distance Education Certification Program are approved by the Commission, while other correspondence courses and learning courses not under the direct supervision of a certified instructor are not approved. The proposed amendments will assist licensees in understanding courses of instruction that are acceptable for credit.

3. The Commission concludes that it has statutory authority to promulgate rules and regulations pursuant to 24 *Del.C.* §2905(a)(1), and to publish guidelines as to acceptable courses of instruction, seminars and lectures in accordance with 24 *Del.C.* § 2911(b).

4. For the foregoing reasons, the Commission concludes that it is necessary to adopt amendments to its Guidelines for Fulfilling the Delaware Real Estate Education Requirements, and that such amendments are in furtherance of its objectives set forth in 24 *Del.C.* Chapter 29.

### IV. Decision and Order to Adopt Amendments

NOW, THEREFORE, by unanimous vote of a quorum of the Commission, **IT IS ORDERED**, that the Guidelines for Fulfilling the Delaware Real Estate Education Requirements are approved and adopted in the exact text as set forth in Exhibit A attached hereto. The effective date of this Order is ten (10) days from the date of its publication in the Delaware *Register of Regulations* pursuant to 29 *Del.C.* § 10118(g).

### By Order of the Real Estate Commission (As authenticated by a quorum of the Commission)

Mary B. Parker, Chairperson, Public Member  
Marvin R. Sachs, Vice Chairperson, Professional Member

Joseph P. Connor, Jr., Secretary, Professional Member  
Ann K. Baker, Professional Member  
Judy L. Bennett, Public Member  
John R. Giles, Professional Member  
James D. McGinnis, Professional Member  
Marcia Shihadeh, Public Member

**\* Note: No changes were made to the regulation as originally proposed and published in the August 2001 issue of the Register at page 238 (5 DE Reg. 238). Therefore, the final regulation is not being republished. Please refer to the August 2001 issue of the Register or contact the Real Estate Commission.**

### DIVISION OF PROFESSIONAL REGULATION BOARD OF CLINICAL SOCIAL WORK EXAMINERS

24 DE Admin. Code 3900

Statutory Authority: 24 Delaware Code,  
Section 3906(1) (24 *Del. C.* §3906(1))

### Order Adopting Rules and Regulations

AND NOW, this 17th day of September, 2001, in accordance with 29 *Del.C.* § 10118 and for the reasons stated hereinafter, the Board of Clinical Social Work Examiners of the State of Delaware (hereinafter "the Board") enters this Order adopting amendments to Rules and Regulations.

### I. Nature of the Proceedings

Pursuant to the Board's authority under 24 *Del.C.* §3906(1), the Board proposed to revise its existing Rules and Regulations to permit a specified portion of the professional supervision requirement relating to the work experience that applicants must demonstrate in order to be licensed to be accomplished by live videoconferencing. Notice of the public hearing to consider the proposed amendments to the Rules and Regulations was published in the Delaware *Register of Regulations* dated April 1, 2001, and two Delaware newspapers of general circulation, in accordance with 29 *Del.C.* § 10115. The public hearing was held on May 14, 2001 at 9:30 a.m. in Dover, Delaware, as duly noticed, and at which a quorum of the Board was present. The Board deliberated and voted on the proposed revisions to the Rules and Regulations. This is the Board's Decision

and Order ADOPTING the amendments to the Rules and Regulations as proposed.

## II. Evidence and Information Submitted

The Board received written comments from Ms. Rita Mariani, Chairperson, State Council for Persons with Disabilities, in response to the notice of intention to adopt the proposed revisions to the Rules and Regulations. Ms. Mariani made several observations while endorsing the concept of the proposed revisions. Ms. Mariani recommended that the Board modify the heading for Section 2.0 to refer to "Professional Supervision During 2 Year Internship- Title 24 *Del.C.* Sec. 3907." Ms. Mariani also noted her belief that the actual hours of supervision may vary considerably from month to month. Finally, Ms. Mariani noted that videoconferencing supervision may reduce unnecessary travel time or enhance the availability of supervision in rural areas. At the May 14, 2001 hearing, the Board received no comment from the public.

## III. Findings of Fact and Conclusions

1. The public was given notice of the proposed amendments to the Rules and Regulations and offered an adequate opportunity to provide the Board with comments. The Board considered the comments received, and determined that while the comments overall endorsed the concept of the proposed revisions, some of the comments were not substantive and others did not directly address the proposed revisions.

2. The proposed amendments to the Rules and Regulations are necessary to permit a specified portion of required supervisory contact to be accomplished by live videoconferencing, while expressly disallowing supervision by telephone or e-mail. The proposed amendments will assist applicants in understanding the professional supervision requirements for the work experience that they must demonstrate in order to obtain a license.

3. The Board concludes that it has statutory authority to promulgate rules and regulations pursuant to 24 *Del. C.* § 3906(1).

4. For the foregoing reasons, the Board concludes that it is necessary to adopt amendments to its Rules and Regulations, and that such amendments are in furtherance of its objectives set forth in 24 *Del. C.* § 3901.

## IV. Decision and Order to Adopt Amendments

**NOW, THEREFORE**, by unanimous vote of a quorum of the Board, **IT IS ORDERED**, that the Rules and Regulations are approved and adopted in the exact text as set forth in Exhibit A attached hereto. The effective date of this Order is ten (10) days from the date of its publication in the

Delaware *Register of Regulations* pursuant to 29 *Del.C.* § 10118(g).

## By Order of the Board of Clinical Social Work Examiners

(As authenticated by a quorum of the Board)

Grace A. Pesickey, LCSW, President, Professional Member

Maria M. Carroll, Ph.D., LCSW, Vice President, Professional Member

Robb H. Carter, Public Member

Mack Davis, Public Member

Malisa Knox, LCSW, Professional Member

Timothy J. Toole, LCSW, Professional Member

Jymace Wescott, Public Member

\* **Note: No changes were made to the regulation as originally proposed and published in the April 2001 issue of the Register at page 1591 (4 DE Reg. 1591). Therefore, the final regulation is not being republished. Please refer to the April 2001 issue of the Register or contact the Board of Clinical Social Work Examiners.**

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF LONG TERM CARE

### RESIDENTS PROTECTION

Statutory Authority: 11 Delaware Code,  
Chapter 85 (11 **Del.C.** Ch. 85)

### Delaware Regulations for the Delaware Adult Abuse Registry

#### Nature of the Proceedings:

The Department of Health and Social Services, Division of Long Term Care Residents Protection (DLTCRP) initiated proceedings in accordance with 29 Delaware Code Chapter 101 to adopt Regulations Governing the Adult Abuse Registry. On June 1, 2001 DLTCRP published proposed regulations in the Register of Regulations and received written and verbal comments at public hearings on July 9 and July 12.

Subsequently, the Department of Health and Social Services, Division of Long Term Care Residents Protection revised and republished proposed Regulations Governing the Adult Abuse Registry on September 1, 2001. The revised and republished proposed regulations incorporate most comments received at the July public hearings.

Additional written and verbal comments were received

at public hearings held October 1 and October 5. DLTCRP reviewed and evaluated all the comments; and the evaluation of those comments received at the July public hearings but not incorporated into the proposed regulations republished on September 1, as well as those comments received at the October public hearings, are in the accompanying Summary of Evidence.

#### **Findings of Fact:**

The Department of Health and Social Services finds that the proposed regulations, as set forth in the attached copy, should be adopted as final regulations. Therefore, it is ordered that the proposed Regulations Governing the Adult Abuse Registry are adopted effective November 10, 2001.

Vincent P. Meconi, Secretary, DHSS  
10.15.2001

#### **Summary of Evidence:**

The proposed regulations elicited comments which are summarized and responded to as follows:

The proposed regulations provide that a person placed on the Adult Abuse Registry shall have the right to appeal the hearing officer's decision to Superior Court within a 30 day period after the finding. One comment suggested that the length of time for an appeal be extended to 60 days. However, since 30 days accords with the time period for appeals to Superior Court under the Administrative Procedures Act, the time period of 30 days is being retained in these regulations.

Two comments were received urging that the regulations include a listing of specific lengths of time an individual would be placed on the Adult Abuse Registry for specific offenses. DLTCRP believes it is impractical to attempt to categorize every type of incident. However, DLTCRP is concerned that similar offenses be treated similarly. Therefore, DLTCRP will take steps to ensure equitable treatment and may consider a future revision of the regulations if such a revision appears warranted.

The regulations include a provision permitting an individual to petition to have his/her name removed from the Registry by demonstrating improved behavior through work references. One comment asked how such references may be provided from outside of the health care sector. The intent of the regulation is to consider references submitted by any employers, including employers outside the health care sector, who find the individual demonstrates conduct that warrants reconsideration of placement on the Registry.

The proposed regulations provide that when an individual petitions for removal from the Adult Abuse Registry, DLTCRP will respond within 60 days. A commenter suggested that the response time be shortened to

30 days. However, inasmuch as the consideration of the petition may include interviews of appropriate parties, DLTCRP believes that the 60 day time period is more reasonable.

A comment was also received urging that DLTCRP provide a list of reasons that a petitioner would be denied when requesting removal from the Registry. Since the petitioner's conduct resulted in his/her placement on the Registry, the burden is on the petitioner to demonstrate improved conduct. An evaluation of that conduct would be the basis for removal or denial of removal from the Registry. Therefore, a list of reasons for denial of removal from the Registry is not necessary.

Two comments suggested that facilities also be required to request an Adult Abuse Registry check on volunteers. DLTCRP lacks the statutory authority to include such a requirement in the regulations.

The regulations specify the information to be provided in the notice to an individual following the completion of an investigation which results in the entry of the person's name on the Adult Abuse Registry. One commenter appeared to believe that the investigation referenced would be an investigation performed preliminarily by another state agency; and the investigator would not be able to provide the information. The regulation instead refers to the investigation concluded by DLTCRP and specifically makes mention of the "Division" which is defined as the Division of Long Term Care Residents Protection.

A comment called attention to the references to the word "facility" and suggested that "facility" be changed to "facility/State agency" to take into account individuals providing services in the community who are covered by the regulations. DLTCRP does not consider this change necessary because the regulations define "Nursing Facility and Similar Facility" to include facilities providing community-based services.

One comment requested that the power of the hearing officer to compel the attendance of witnesses and the production of evidence be clarified to refer solely to witnesses and evidence requested by the state or the individual requesting the hearing. DLTCRP does not believe that either the statute or the regulations envision a role for the hearing officer which would include compelling the attendance of any witness or the production of any evidence other than that requested by parties to the hearing. Therefore, this change is not included in the regulations, but will be reconsidered in the future if necessary.

Finally, one commenter objected to the inclusion of "psychiatric units of acute care hospitals" in the definition of "Nursing Facility and Similar Facility." Accordingly, the final regulations have removed the phrase "psychiatric units of acute care" from the regulations and replaced it with the language directly from the statute. Since that change is made to conform with the statute, DLTCRP does not believe

that such a change requires a further public hearing.

**Section 1: Definitions**

(A) "Adult Abuse" means:

(1) Physical abuse including the intentional and unnecessary infliction of pain or injury to an infirm adult or the threat thereof. This includes, but is not limited to, hitting, kicking, pinching, slapping, pulling hair, or any sexual contact, or the threat of any of the above acts.

(2) Emotional abuse including, but not limited to:

- (a) Ridiculing or demeaning an infirm adult.
- (b) Making derogatory remarks to an infirm adult.
- (c) Cursing directed towards an infirm adult.
- (d) Threatening retaliation, directly or

indirectly

(3) Mistreatment including the inappropriate use of medications, isolation or physical or chemical restraints on or of an infirm adult.

(4) Neglect including:-

(a) Intentional lack of attention to physical needs of the infirm adult including, but not limited to, toileting, bathing, meals and safety.

(b) Intentional failure to report health problems or changes in health problems or changes in health condition of an infirm adult to an immediate supervisor, doctor or nurse.

(c) Intentional failure to carry out a prescribed treatment plan for an infirm adult.

(5) Misappropriation of property including the theft of money or property from the infirm adult, use of money or property without permission of the infirm adult or guardian, and mishandling of money or property belonging to the infirm adult.

(B) "Substantiated Abuse" means that, weighing the facts and circumstances, a reasonable person has concluded that more likely than not the identified individual has committed adult abuse.

(C) "Person Seeking Employment" means any person applying for employment in a health care facility or child care facility that affords direct access to persons receiving care at such a facility, or a person applying for licensure to operate a child care facility.

(D) "Health Care Facility" means any custodial or residential facility where health, nutritional or personal care is provided for infirm adults, including nursing homes, hospitals, home health care agencies, and adult day care facilities.

(E) "Child Care Facility" means any child care facility which is required to be licensed by the Department of Services for Children, Youth and Their Families.

(F) "direct access" means the opportunity to have personal contact with persons receiving care during the course of one's assigned duties.

(G) "Infirm adult" means any person 18 years of age or over who is physically or mentally impaired, either permanently or temporarily.

(H) "proposed concern" refers to a temporary classification used until the final determination is made.

(I) "Department" means the Department of Health and Social Services.

**Section 2: Use of Registry**

(A) No employer who operates a health care facility or child care facility shall hire any person seeking employment without requesting and receiving an Adult Abuse Registry check for such person.

(1) Any employer who is required to request an Adult Abuse Registry check shall obtain a statement signed by the person seeking employment wherein the person authorizes a full release for the employer to obtain the information provided pursuant to such a check.

(2) The employer shall call the Adult Abuse Registry, provide the name and social security number of the person seeking employment, and will be informed of any information contained in the registry.

(B) When exigent circumstances exist which require an employer to fill a position in order to maintain the required or desired level of service, the employer may hire a person seeking employment on a conditional basis after the employer has requested an Adult Abuse Registry check.

(1) The employment of the person shall be conditional and contingent upon receipt of the Adult Abuse Registry check by the employer.

(2) The person shall be informed in writing, and shall acknowledge in writing, that his or her employment is conditional, and contingent upon receipt of the Adult Abuse Registry check.

**Section 3: Investigation of Adult Abuse.**

(A) The Department shall investigate any individual against whom an allegation of adult abuse has been made.

(B) If the investigator determines preliminarily that the facts and circumstances conclude that more likely than not the individual has committed abuse or neglect, the individual's name shall be placed on the Adult Abuse Registry with a finding of "Proposed Concern".

**Section 4: Administrative Hearings**

(A) Individuals against whom an allegation is preliminarily substantiated shall be notified in writing of the intent to place their name on the Adult Abuse Registry with a finding of "Substantiated Abuse" and shall be offered a right to an administrative hearing. Information contained in the finding of substantiated abuse shall consist of

- (1) The date of the incident
- (2) The type of facility where the incident occurred
- (3) A brief description of the incident

(4) Length of time the finding remains on the Abuse Registry

(B) Individuals must request in writing an administrative hearing within 30 days of the date of the notice that a finding of abuse has been preliminarily substantiated.

(C) Individuals who fail to request an administrative hearing within 30 days shall have their name and information regarding the incident changed from a finding of "Proposed Concern" to a finding of "Substantiated Abuse" on the Adult Abuse Registry 30 days after the date of the notice.

(D) Individuals who have entered a plea or who have been convicted by a court of law of adult abuse, shall not have the right to an administrative hearing. Their name and information regarding the incident shall be entered directly to the Adult Abuse Registry.

(E) The Department shall make a scheduling decision within 10 days of receipt of a request for an administrative hearing by an individual who has received notice of a preliminary finding of substantiated abuse.

(1) An individual requesting an administrative hearing shall be entitled to a statement describing the incident, the date and location of the incident, and the name of the victim.

(2) The individual shall be afforded an opportunity to appear with or without an attorney, submit documentary evidence, present witnesses, and question any witness the Department presents.

(3) If, at the conclusion of the hearing, the hearing officer concludes that, weighing the facts and circumstances, more likely than not, the identified individual has committed adult abuse, a notice of "substantiation" shall be placed on the registry.

(4) The hearing officer shall render a written decision and will notify the individual and the Office of the Ombudsman of the decision. The notice will specify the reasons for the decision and, if the finding is substantiated, the length of time the finding of substantiated abuse shall remain on the registry.

(5) The decision of the hearing officer is final.

#### **Section 5: Length of time on the Abuse Registry**

The length of time on the Abuse Registry shall be no less than five years and may be permanent. The length of time shall be based on the actual injury or risk of injury to the infirm adult and whether there exists a pattern of adult abuse. Notwithstanding the above, the length of time on the registry may be less than five years if there is evidence of mitigating circumstances indicating that adult abuse by the individual was a singular event and not likely to reoccur.

#### **Section 6: Registry of Nurse Aides**

The names of registrants with findings of abuse, neglect,

or misappropriation entered on the Registry of Nurse Aides created pursuant to 42 CFR § 483 shall be entered into the Adult Abuse Registry with a finding of substantiated abuse. The finding shall remain on the Adult Abuse Registry for so long as the finding remains on the Registry of Nurse Aides. There shall be no right of appeal for findings entered on the Adult Abuse Registry under this section.

#### **Section I: Definitions**

**"Abuse"** shall have the same meaning as contained in 16 Del. C., § 1131, and shall include mistreatment, neglect and financial exploitation as defined therein.

**"Child Care Facility"** means any child care facility which is required to be licensed by the Department of Services for Children, Youth and Their Families.

**"Contractor"** means an entity under contract to provide services for more than 20 hours per week (aggregate) and for more than six weeks in a twelve month period for a health care service provider, and whose employees have the opportunity for direct access to persons receiving care. For purposes of these regulations, contractor does not include construction contractors.

**"Department"** means the Department of Health and Social Services.

**"Direct Access"** means the opportunity to have personal contact with persons receiving care during the course of one's assigned duties.

**"Division"** means the Division of Long Term Care Residents Protection.

**"Health Care Service Provider"** means any person or entity that provides services in a custodial or residential setting where health, nutritional or personal care is provided for persons receiving care, including but not limited to, hospitals, home health care agencies, adult care facilities, temporary employment agencies and contractors that place employees or otherwise provide services in custodial or residential settings for persons receiving care, and hospice agencies. Health Care Service Provider does not include any private individual who is seeking to hire a self-employed health caregiver in a private home.

**"Nursing Facility and Similar Facility"** means any facility required to be licensed under 16 Del. C., Ch. 11. This includes, but is not limited to, facilities commonly called nursing homes, assisted living facilities, intermediate care facilities for persons with mental retardation, neighborhood group homes, family care homes and rest residential care facilities. Also included are the Stockley Center, the Delaware Psychiatric Center and **[psychiatric units of acute care]** hospitals certified by the Department of Health and Social Services pursuant to 16 Del. C., § 5001 or 5136.

**"Person Receiving Care"** means any person who, because of his/her physical or mental condition, requires a level of care and services suitable to his/her needs to

contribute to his/her health, comfort and welfare.

**"Person Seeking Employment"** means any person applying for employment with or in a health care service provider, nursing facility or similar facility that may afford direct access to persons receiving care at such facility, or a person applying for licensure to operate a child care facility. It shall also include a self-employed health caregiver who has direct access in any private home.

**"Substantiated Pending Appeal"** refers to a placement on the Registry based on an investigative finding prior to the subject exercising his/her right to appeal.

**"Substantiated Abuse"** means that, weighing the facts and circumstances, a reasonable person has concluded by a preponderance of evidence that the identified individual has committed adult abuse for the purpose of placement on the Adult Abuse Registry.

### **Section 2 Use of Registry**

(A) No health care service provider, to include nursing and similar facilities, or child care facility shall hire any person seeking employment or retain any contractors without requesting and receiving an Adult Abuse Registry check for such person.

(1) Any employer who is required to request an Adult Abuse Registry check shall obtain a statement signed by the person seeking employment wherein the person authorizes a full release for the employer to obtain the information provided pursuant to such a check. Said authorization shall include the following language: "I hereby release the indicated employer to obtain from the Division of Long Term Care Residents Protection any information concerning me which may be on the Adult Abuse Registry pursuant to 11 Del. C., § 8564."

(2) When exigent circumstances exist which require an employer to fill a position in order to maintain the required or desired level of service, the employer may hire a person seeking employment on a conditional basis after the employer has requested an Adult Abuse Registry check.

(3) The person shall be informed in writing, and shall acknowledge in writing, that his or her employment is conditional, and contingent upon receipt of the Adult Abuse Registry check.

(B) Private individuals seeking to hire an individual to provide healthcare services in a private residence may request the Division to determine if the potential employee is listed on the Adult Abuse Registry. A short letter of request along with a release form signed by the prospective employee may be mailed or faxed to the Division of Long Term Care Residents Protection (DLTCRP) # 3 Mill Road, Suite 308, Wilmington, DE 19806, fax number (302) 577-6673.

### **Section 3: Investigation of Adult Abuse**

(A) The Division shall investigate any individual

against whom an allegation of adult abuse has been made in accordance with the timeframes delineated in 16 Del. C., § 1134(d).

(B) If the investigation substantiates pending appeal that the alleged abuse occurred, the Division's Investigations Unit Chief shall enter on the Adult Abuse Registry, with a finding of "Substantiated Pending Appeal," the individual's name, date/time of the incident, a description of same and the length of time the finding shall remain on the Registry.

(C) The Division may accept preliminary investigations by a state agency or an entity contracted by a state agency. The Division will review and may revise the findings upon further investigation.

(D) Upon placement of a person on the Adult Abuse Registry, the Division will notify the facility from which the complaint originated as well as the current employer, if different, and the victim that the person is on the Registry as "Substantiated Pending Appeal."

### **Section 4: Administrative Hearings**

(A) An individual against whom an allegation is substantiated pending appeal shall be notified by certified mail at his/her home address, to be followed by written notice in care of his/her current employer at the discretion of the Division, that his/her name has been entered on the Adult Abuse Registry and shall be offered a right to an administrative hearing. The burden of proof in such hearing shall be on the Division. Individuals shall be informed upon completion of the investigation of the following:

(1) The date and time of the incident.

(2) The name and type of facility where the incident occurred.

(3) A brief description of the incident.

(4) Length of time the finding remains on the Adult Abuse Registry.

(B) All requests for an administrative hearing must be received in writing, postmarked within 30 days of the date of the notice that a finding of abuse has been substantiated pending appeal. The Director or his/her designee shall dismiss untimely requests for hearing except when the individual submits evidence of good cause.

(C) An individual who fails to request an administrative hearing as described above shall have his/her name and information regarding the incident changed from a finding of "Substantiated Pending Appeal" to a finding of "Substantiated Abuse" on the Adult Abuse Registry. At that time the Division shall notify the individual, the facility from which the complaint originated as well as the current employer, if different, and the victim that the individual is on the Registry with a finding of "Substantiated Abuse."

(D) An individual who has entered a plea or who has been convicted by a court of law of adult abuse shall have the right to an administrative hearing solely to challenge the proposed length of time of registration on the Adult Abuse

Registry.

(E) The hearing officer shall have the power to compel the attendance of witnesses and the production of evidence. Under no circumstance shall the hearing officer order the release of the investigative report and documents attached thereto, provided however, the hearing officer may order the release of statements of witnesses.

(F) The hearing officer should receive requests for witnesses and/or the production of evidence no less than ten business days prior to the hearing date.

(G) The individual shall be afforded an opportunity to appear with or without an attorney, submit documentary evidence, present witnesses, and question any witness the Division presents. Limited continuances shall be granted for good cause.

(H) If, at the conclusion of the hearing, the hearing officer concludes by a preponderance of evidence, that the identified individual has committed adult abuse, for the purpose of placement on the Adult Abuse Registry, a notice of "Substantiated Abuse" shall be placed on the Adult Abuse Registry. If, at the conclusion of the hearing, the hearing officer concludes that the individual has not committed adult abuse, the finding of "Substantiated Pending Appeal" shall be removed from the Adult Abuse Registry.

(I) The hearing officer shall render a written decision within thirty working days of the hearing and will notify the individual, the Division, the facility and the victim of the decision. The notice will specify the reasons for the decision and, if the finding is substantiated, the length of time the finding of substantiated abuse shall remain on the Adult Abuse Registry.

(J) Any person placed on the Adult Abuse Registry shall have the right to appeal the decision within thirty days of the finding. The decision of the hearing officer may be appealed on the record to Superior Court.

#### **Section 5: Length of Time on the Adult Abuse Registry**

(A) The length of time on the Adult Abuse Registry shall be based on the seriousness of the incident and whether there exists a pattern of adult abuse. Evidence of mitigating circumstances may be considered.

(B) The names of registrants with findings of abuse, neglect or misappropriation entered on the Registry of Nurse Aides created pursuant to 42 CFR § 483 shall be entered on the Adult Abuse Registry with a finding of substantiated abuse. There shall be a right of appeal for findings entered on the Adult Abuse Registry under this section solely to challenge the proposed length of time of registration on the Adult Abuse Registry.

(C) Upon final disposition of the allegation, the Division shall notify, in writing, the victim, the facility where the incident occurred as well as the current employer of the individual, if different, of the final disposition.

#### **Section 6: Removal of a Person from the Adult Abuse Registry**

(A) The Department shall be authorized to remove a person from the Adult Abuse Registry before the expiration of his/her registration period when the Department deems that the person no longer poses a threat to any person receiving care in accordance with 11 Del. C., § 8564(g).

(B) A person whose name has been placed on the Adult Abuse Registry shall have the right to petition the Division, in writing, for the removal of his/her name from the Registry. Said petitioner must demonstrate:

(1) A minimum of twelve months has passed since his/her placement on the Registry.

(2) Affirmative steps have been taken to correct behavior that led to placement on the Registry, i.e. anger management counseling, drug/alcohol treatment, sensitivity training, etc.

(3) Demonstrated improved behavior through work references.

(C) The Division will evaluate the information provided by the petitioner and respond in writing within 60 days of receipt of all information provided by the petitioner. The Division is authorized to grant or deny the removal based on the review of the information presented. If the Division denies the request, the petitioner may request a hearing to appeal the denial, or reapply for the removal after 6 months or when the petitioner can produce evidence of performance of the affirmative steps listed above.

#### **Section 7: Disclosure of Adult Abuse Registry Records**

Except as otherwise provided in these regulations, the dissemination of information contained in the Adult Abuse Registry shall be limited as follows:

(A) Hearing Officer Opinions shall be released upon request to the following:

(1) The subject of the hearing.

(2) A victim identified by name in the record or his/her legal representative.

(3) Law enforcement officials pursuant to an official investigation.

(4) The Long Term Care Ombudsman pursuant to a complaint from a victim identified in the record.

(5) The Medicaid Fraud Control Unit of the Department of Justice.

(6) The Division of Professional Regulation if a finding of substantiated abuse pertains to a licensed professional.

(B) Investigative files shall be released upon request to:

(1) Law enforcement officials pursuant to an official investigation.

(2) The Medicaid Fraud Control Unit of the Department of Justice.

(3) Rights protection agencies otherwise entitled under applicable federal or state law.

**ADDENDUM**  
**REPORTING TO NURSE AIDE REGISTRY**

In accordance with 42 CFR § 483, the Division of Long Term Care Residents Protection will report findings of abuse to the Nurse Aide Registry under the following procedure:

1. When the Division has substantiated pending appeal a finding of abuse, neglect, mistreatment or financial exploitation against a certified nurse assistant, a determination will be made whether the substantiated findings meet the criteria required in the federal regulations or the criteria in state statute and regulations.

2. If the findings support the criteria for abuse, mistreatment or misappropriation of property in the federal regulations, the certified nurse assistant will be notified that his/her name is both reported to the Nurse Aide Registry and placed on the Adult Abuse Registry, and that he/she has a right to a hearing. The CNA will also be notified that, with regard to the Nurse Aide Registry, a substantiated finding will result in a lifetime prohibition against employment in a federally certified facility.

3. If the findings support the criteria for neglect in the federal regulations, the certified nurse assistant will be notified that his/her name is both reported to the Nurse Aide Registry and placed on the Adult Abuse Registry, and that he/she has a right to a hearing. The CNA will also be notified that, with regard to the Nurse Aide Registry, a substantiated finding of neglect will result in a lifetime prohibition against employment in a federally certified facility. However, the CNA will be further informed of his/her right to petition the Division to have the report removed from the Nurse Aide Registry in accordance with §1819(g)(1)(D) of the Social Security Act.

4. The notice to the certified nurse assistant will include an explanation that the hearing described in the Adult Abuse Registry regulations will also consider the placement of the CNA on the Nurse Aide Registry. The CNA will be informed that if the evidence presented at a hearing does not warrant a finding of abuse, neglect, mistreatment or misappropriation of property under the federal regulations, the evidence will be considered to determine whether it meets the criteria for abuse, neglect, mistreatment or financial exploitation under the state Adult Abuse statute.

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**DIVISION OF LONG TERM CARE**  
**RESIDENTS PROTECTION**

Statutory Authority: 16 Delaware Code,  
Chapter 11 (16 Del.C. Ch. 11)

**Delaware Regulations for Group Home Facilities for  
Persons with Aids****Nature of the Proceedings:**

The Department of Health and Social Services, Division of Long Term Care Residents Protection (DLTCRP) initiated proceedings in accordance with 29 Delaware Code, Chapter 101 to adopt Regulations for Group Home Facilities For Persons With AIDS. On June 1, 2001, DLTCRP published proposed regulations in the Register of Regulations and received written and verbal comments at a public hearing on July 12.

The Department of Health and Social Services, Division of Long Term Care Residents Protection revised the proposed regulations in response to comments at the July hearing and republished the revised regulations in the September Register of Regulations. A second public hearing was held October 5, 2001.

Additional written comments were received at the second hearing. DLTCRP reviewed and evaluated all the comments; and the evaluation of those comments not incorporated into the revised proposed regulations republished on September 1 are in the accompanying Summary of Evidence.

**Findings of Fact:**

The Department of Health and Social Services finds that the proposed regulations, as set forth in the attached copy, should be adopted as final regulations. Therefore, it is ordered that the proposed Regulations for Group Home Facilities For Persons With AIDS are adopted effective November 10, 2001.

Vincent P. Meconi, Secretary, DHSS  
10.15.2001

**Summary of Evidence:**

Comments on the proposed regulations have been received and evaluated as follows:

The regulations permit a Group Home for Persons with AIDS to have as many as 16 beds, an increase from 8 beds in the current regulations. One comment expressed concern at the increase in size. DLTCRP, however, is responding to the need, as experienced by the provider, for services for a larger number of individuals whose health status is appropriate for a group home. Further, under the provisions of the Life

Safety Code, a facility with up to 16 beds is considered a small facility, so these regulations will now conform to the Life Safety Code.

A comment also objected to the removal from the regulations of both a regulation pertaining to suspension or revocation of a license and an appendix to the regulations. In both instances, the portions removed either repeated the statute or paraphrased the statute. DLTCRP intends to ensure that copies of the statute are made available so that readers see the complete and accurate text of the statute.

Similarly, a comment called attention to the language in the current regulations which referenced an advance directive in two different regulations. The comment indicated that both references should be retained. However, the references were repetitive and, therefore, one has been deleted.

In another comment, pertaining to grab bars and slip resistant surfaces for showers and tubs, a comment noted that the regulations had been diluted. In fact, the proposed regulations contain no substantive change from the current regulations, but simply reflect the condensation of two regulations into one.

In the proposed regulations published in June, a requirement that physicians sign verbal orders in 5 days drew a number of comments objecting to that time period and suggesting a time period of 14 days as more workable. One comment, however, proposed a 28-day period. The regulations as proposed in September accepted the 14-day period. Since that time period was suggested by all but one commenter, the proposal for a 28-day time span has not been accepted.

### Regulations for Group Home Facilities For Persons With Aids

#### Title 16 – Health and Safety

#### Part II, Chapter 11 Sanitoria, Rest Homes, Nursing Homes, Boarding Homes and Related Institutions

~~"Sanitorium, rest home, nursing home, boarding home, and related institutions," within the meaning of this chapter, mean any institution, building or agency in which accommodation is maintained, furnished, or offered for any fee, gift, compensation or reward for the care of more than 1 aged, infirm, chronically ill, adult psychiatrically disabled or convalescent person. The word "person" shall not include mother, father, sister, brother, niece, nephew, mother-in-law, father-in-law, sister-in-law, or brother-in-law of any individual operating a facility under this chapter.~~

These regulations are promulgated in accordance with 16 Del.C. Chapter 11

All facilities must comply with applicable local, state

and federal laws and regulations.

## REGULATIONS

### SECTION 62.0 - DEFINITION

The following regulations are designed specifically for Group Homes for ~~eight (8)~~ sixteen (16) or less persons with AIDS and establish the minimal acceptable level of living and programmatic conditions in such homes. Only those residents shall be admitted with an established diagnosis and disease progression such that the resident requires a routine and frequent combination of physician, professional nursing and supportive services. Provisions shall be made for the transfer and/or discharge of residents when acute care (hospital) services are required or requested.

### SECTION 62.1 GLOSSARY OF TERMS

62.101 Activities of Daily Living - ~~Getting into or out of bed, bathing, dressing, eating, walking, shaving, brushing teeth and combing hair.~~

Normal daily activities including but not limited to ambulating, transferring, range of motion, grooming, bathing, dressing, eating and toileting.

62.102 ~~Certified Nurse Aide/Nurse Assistant – An individual who provides care that does not require the judgment and skills of a licensed nurse.~~

~~The care may include but is not limited to the following: bathing, dressing, grooming, toileting, ambulating, transferring and feeding, observing and reporting the general well-being for the person(s) to whom they are providing care.~~

~~The aide has met the training and testing requirements for nurse aide certification and is included on Delaware Nurse Aide Registry.~~

Certified Nursing Assistant – An individual certified in accordance with 16 Del. C., Chapter 30A who provides care that does not require the judgment and skills of a licensed nurse.

62.103 Continuous - Available at all times without cessation, break or interruption.

62.104 Department – Department of Health and Social Services.

62.104 62.105 Dietitian - A person currently registered by the Commission on Dietetic Registration of the American Dietetic Association and/or a Certified Dietitian/Nutritionist in the State of Delaware.

62.105 62.106 Direction - Authoritative policy or procedural guidance for the accomplishment of a function or activity.

62.107 Division – Division of Long Term Care Residents Protection

62.106 62.108 Facilities - The site, physical structure and equipment necessary to provide the required service.

62.107 62.109 Group Home Administrator - The

individual responsible for the operation of the group home.

~~62.110~~ 62.110 Incident – An occurrence or event, a record of which must be maintained in facility files, that results or might result in harm to a resident. Incident includes alleged abuse, neglect, mistreatment and financial exploitation; incidents of unknown source which might be attributable to abuse, neglect or mistreatment; all deaths; falls; and errors or omissions in medication/treatment. (Also see Reportable Incident, 62.119.)

~~62.108~~ 62.111 Licensed Practical Nurse - A nurse who is licensed to practice as a practical nurse in the State of Delaware or whose license is recognized to practice in Delaware.

~~62.109~~ 62.112 Licensee - The person or organization to whom the group home for persons with AIDS license is granted. The licensee has full legal authority and responsibility for the governance and operation of the group home.

~~62.110~~ Medical Services – The services pertaining to medical care and performed at the direction of a physician on behalf of residents by physicians, nurses, or any other professional or technical personnel.

62.113 Medical and Nursing Services - The services pertaining to medical care and performed at the direction of a physician on behalf of residents by physicians, nurses, or any other professional or technical personnel such as an advanced nurse practitioner or physician's assistant and which may include the curative, restorative, preventive and palliative aspects of nursing care.

~~62.111~~ 62.114 Notifiable Diseases - A communicable disease or condition of public health significance required to be reported to the Division of Public Health in accordance with the Delaware Department of Health and Social Services Regulations for the Control of Communicable and other Disease Conditions.

~~62.112~~ 62.115 Nursing Service Personnel - Those licensed or unlicensed persons giving direct services to the residents, pertaining to the curative, restorative, preventive or palliative aspects of nursing care and who are supervised by either a registered professional nurse or a licensed practical nurse.

~~62.113~~ Nursing Services – Those medical services pertaining to the curative, restorative, preventive and palliative aspects of nursing care that are performed or supervised by a registered professional nurse or a licensed practical nurse at the direction of a physician.

~~62.114~~ 62.116 Personal Care Services - Those health related services that include general supervision of and direct assistance to, individuals in their activities of daily living.

~~62.115~~ 62.117 Physician - A physician licensed to practice in the State of Delaware.

~~62.116~~ 62.118 Registered Professional Nurse - A nurse who is a graduate of an approved school of professional nursing and who is licensed to practice in the

State of Delaware or whose license is recognized to practice in Delaware.

62.119 Reportable Incident – An occurrence or event which must be reported at once to the Division and for which there is reasonable cause to believe that a resident has been abused, neglected, mistreated or subjected to financial exploitation. Reportable incident also includes an incident of unknown source which might be attributable to abuse, neglect or mistreatment; all deaths; falls with injuries; and significant errors or omissions in medication/treatment which cause the resident discomfort or jeopardize the resident's health and safety. (Also see Incident, 62.110.)

~~62.117~~ 62.120 Resident Beds - Accommodations with supportive services (such as: food, laundry, housekeeping) for persons who generally stay in excess of twenty-four (24) hours.

~~62.118~~ 62.121 Supervision - ~~Direct oversight and inspection of the act of accomplishing a function or activity.~~ That degree of oversight and inspection of licensed and unlicensed personnel necessary to ensure the safety, comfort and well-being of residents.

## **SECTION 62.2 LICENSING REQUIREMENTS AND PROCEDURES**

### 62.200 License Requirement

~~No person shall establish, conduct or maintain in this State any sanatorium, rest home, nursing home, or boarding home for the care of human beings without first obtaining a license from the Department of Health and Social Services.~~

62.200 When a facility is classified under this law or regulation and plans to construct, extensively remodel or convert any buildings, ~~two (2) copies~~ one (1) copy of property prepared plans and specifications for the entire facility are to be submitted to the Division of Public Health. An approval in writing is to be obtained before such work is begun. After the work is completed, in accordance with the plans and specifications, a new license to operate will be issued.

62.201 Separate licenses are required for facilities, maintained in separate locations, even though operated under the same management. A separate license is not required for separate buildings maintained by the same management on the same grounds. ~~A license is not transferable from person to person or from one location to another.~~ Under conditions of assignment or transfer of ownership, a new license will be issued.

### ~~62.203~~ 62.202 Inspections

Every group home for persons with AIDS for which a license has been issued under this chapter shall be periodically inspected by a representative of the Division of ~~Public Health.~~

A. Issuance of Licenses. Licenses shall be issued in the following categories:

(1) Annual License. An annual license (12 months) may be renewed yearly if the holder is in full compliance with the provisions of ~~this chapter 16 Del. C., Chapter 11~~ and the rules and regulations of the Department of Health and Social Services.

(2) Provisional License. ~~A provisional license shall be granted for a term of ninety (90) days only, and shall be granted only to a home which, although not in full compliance, is nevertheless demonstrating evidence of improvement. A provisional license shall be granted for a term of ninety (90) days only, and shall be granted to a group home during its first 90 days of operation. A provisional license may also be granted to a group home, which although not in full compliance, is nevertheless demonstrating evidence of improvement.~~

(3) Restricted License. ~~A restricted license shall be granted for a term of ninety (90) days when the home is not in compliance with the provisions of this chapter, and does not demonstrate evidence of improvement. The holder of a restricted license may not admit residents to the home to which the restricted license applies during the period of restriction, but the home may remain in operation until such license is revoked, expires, becomes annual or provisional.~~

#### ~~B. Suspension or Revocation of Licenses~~

~~The Secretary of the Department of Health and Social Services or his/her designee may suspend or revoke a license issued under this chapter on any of the following grounds:~~

(1) ~~Violation of any of the provisions of this chapter or the rules and regulations issued pursuant thereto.~~

(2) ~~Permitting, aiding or abetting the commission of any illegal act in the facility.~~

(3) ~~Conduct or practices detrimental to the welfare of the resident. Before any license issued under this chapter is suspended or revoked, thirty (30) days notice shall be given in writing to the holder of the license, during which time he/she may appeal for a hearing before the Secretary of the Department of Health and Social Services or his/her designee.~~

~~Provisional or restricted licenses may be issued by the Office of Health Facilities Licensing and Certification without notice if such actions are deemed to be in the best interest of the residents. The holder of the license may appeal the issuance of the provisional or restricted license to the Secretary or his/her designee, however, the provisional or restricted license will remain in effect during the pendency of the appeal.~~

#### ~~C. Renewal of License After Suspension or Revocation~~

~~If and when the conditions upon which the suspension or revocation of a license are based have been corrected and after a proper inspection has been made, a new~~

~~license may be granted.~~

~~62.204 62.203~~ The Division of ~~Public Health~~ may adopt, amend, or repeal regulations governing the operation of ~~the institutions defined in Section 1 10 1 of this title facilities defined under 16 Del. C., Chapter 11, Subchapter I, Licensing By The State,~~ and shall establish reasonable standards of equipment, capacity, sanitation, and any other conditions which might influence the health or welfare of the residents of such institutions.

### SECTION 62.3 GENERAL REQUIREMENTS

62.301 All required records maintained by the group home for persons with AIDS shall be open to inspection by the authorized representatives of the Division of ~~Public Health~~.

62.302 The term "Group Home" shall not be used as part of the name of any facility in this State, unless it has been so classified by the Department of Health and Social Services.

62.303 No rules shall be adopted by the licensee or administrator which are in conflict with these regulations.

62.304 The Division of ~~Public Health~~ shall be notified, in writing, of any changes in the Administrator.

62.305 The group home shall establish written policies regarding the rights and responsibilities of residents, and these policies and procedures are to be made available to sponsoring agency(ies), and authorized representatives of the Division of ~~Public Health~~.

~~62.306 Each facility shall provide with the admission agreement to all residents or their sponsors a complete statement enumerating all charges for services, materials and equipment which shall, or may be, furnished to the resident during the period of residency.~~

~~62.307 62.306~~ Each facility shall make known, in writing, the refund and prepayment policy at the time of admission, and in the case of third-party payment, an exact statement of responsibility in the event of retroactive denial.

~~62.308 62.307~~ The group home shall provide safe storage for resident's valuables.

~~62.309 62.308~~ The group home provider shall assure emergency transportation and care through use of appropriate transfer agreements with local medical facilities.

~~62.310 62.309~~ All residents shall be afforded all protections and privileges contained in the Delaware Patients Bill of Rights.

### SECTION 62.4 PLANT, EQUIPMENT AND PHYSICAL ENVIRONMENT

#### 62.401 Site Provisions:

Each group home for persons with AIDS shall be located on a site which is considered suitable by the Division of Public Health. The site must be safe easily drained, suitable for the disposal of sewage, and for the furnishing of a potable water supply.

**62.402 Water Supply and Sewage Disposal:**

A. The water supply and the sewage disposal system shall be approved by the Division of Public Health and the Department of Natural Resources and Environmental Control respectively.

B. The water system shall be designed to supply adequate hot and cold water, under pressure, at all times.

C. Hot water at shower, bathing and hand washing facilities shall not exceed 110°F (43°C).

**62.403 Building:**

A. The building shall be so constructed and maintained to prevent the entrance or existence of rodents and insects at all times. An exterior openings shall be effectively screened during the fly season. Screen doors shall open outward. All screening shall have at least sixteen (16) mesh per inch.

B. The roof, exterior walls, doors, sky lights and windows shall be weather tight and watertight and shall be kept in sound condition and good repair.

C. The exterior of the site shall be free from hazards and also from the accumulation of ~~waste materials, obsolete and unnecessary articles, tin cans, rubbish, and other fitter~~ litter.

D. Floor and wall surfaces of bathrooms, kitchens, and soiled utility rooms shall be constructed and maintained to be impervious to water and to permit the floor and walls to be easily kept in a clean condition.

E. Basements shall be of such construction that they can be maintained in a dry and sanitary condition.

F. Main entrance areas shall open into general or group function areas, usually living rooms, ~~, not into private or more specific function areas, i.e., bedrooms or quiet space areas.~~

G. The group home facility must be handicapped accessible. The entrance and circulation areas shall meet appropriate American National Standards Institute ('A.N.S.I.') standards and all other State and Federal standards.

H. One of the main points of entry for the facility shall provide entry closet capacity for outdoor and foul weather clothing.

L. Traffic to and from any room shall not be through a bedroom bathroom, utility room or kitchen except where a utility room, toilet room or bathroom opens directly off the room it serves.

**62.404 Plumbing:**

The plumbing shall meet the requirements of all municipal or county codes. Where there is no local law, the provisions of the Division of Public Health Sanitary Plumbing Code shall prevail.

**62.405 Heating Ventilation and Air Conditioning:**

A. The heating equipment for all living and sleeping quarters shall be adequate, safe, protected, and easily controlled. It shall be capable of maintaining the

temperature in each room used by residents at a minimum of 72°F (21°C). Portable heating devices shall not be used.

B. The group home must be adequately ventilated. Air conditioning equipment must be adequate and capable of maintaining the temperature in each room used by residents between 72°F - 82°F.

**62.406 Lighting:**

Each room must be suitably lighted at all times for maximum safety, comfort sanitation and efficiency of operation. A minimum of 30 foot candles of light shall be provided for all working and reading surfaces, and a minimum of 10 foot candles of light on all other areas. This includes hallways, stairways, storerooms and bathrooms.

**62.407 Safety Equipment:**

A. To prevent slipping, staircases shall have stair treads and sturdy handrails.

~~B. Stairways, ramps and open-sided porches shall have adequate lighting and handrails.~~

~~C. Hallways shall have night lights.~~

B. Floor surfaces, especially in heavy traffic areas shall be durable, yet non abrasive and slip-resistant. Area rugs on hand finished floors shall have a non skid backing. Carpeting shall be maintained in a clean and slip-resistant condition.

C. All doors for areas used by residents shall be capable of being opened from both sides.

**62.408 Bedrooms:**

~~A. Each room shall be well lighted and well ventilated.~~ Each room shall be an outside room with at least one (1) window opening directly to the outside. The windowsill shall be at least three (3) feet above the floor and above grade. Windows shall be constructed to allow a maximum of sunlight and air, to eliminate drafts, and be easy to open and close. Window area shall be no less than the equivalent of one-tenth (1/10) of the floor space.

B. Bedrooms for one (1) person shall be at least 100 square feet in size; and bedrooms for more than one (1) person shall provide at least 80 square feet of floor space per person and be adequately spaced for resident care. (Minimum room areas are exclusively of toilet rooms, closets lockers, wardrobes, alcoves or vestibules). The ceiling shall not be less than seven (7) feet from the floor.

C. Each bedroom is to have walls that go to the ceiling and a door that can be closed.

D. Adequate electrical outlets shall be conveniently located in each room and each room shall have general lighting and night lighting. A reading light shall be provided for each resident. At least one light fixture shall be switched at the entrance to each bedroom.

~~E. Walls shall be finished in colors which are light and cheerful.~~

F. E. Facilities shall ensure adequate privacy and separation of sexes in sleeping arrangements except in cases of husband or wife or other long term consensual

partnership arrangements.

~~G. F.~~ If bedroom doors of residents are locked by residents for privacy reasons, all persons on duty must carry a master key for these locks.

~~H. G.~~ Bedrooms shall accommodate no more than two residents per room.

~~I. H.~~ Bedrooms shall contain a separate bed of proper size and height for each resident.

~~J. I.~~ Each resident shall be provided with at least one chair, chest-of-drawers, closet space with a clothes rack and shelves, and a mirror.

~~K. Bedroom furniture and closets shall have sufficient space to provide readily accessible storage for the resident's personal possessions and clothes.~~

~~L. J.~~ Bedroom windows shall have window treatment(s) that close for privacy.

~~M. K. Bedrooms shall have closable doors that open directly into corridors or Hallways. Bedroom doors shall open directly into corridors or hallways.~~

#### 62.409 Bathrooms and Hand Washing Facilities:

A. At least one (1) window or mechanical ventilation to the outside shall be provided. ~~Floors shall not be slippery.~~

B. Bathroom design shall be handicapped accessible and meet appropriate American National Standards Institute (ANSI) Standards.

C. Toilets, showers, bathtubs and wash basins shall provide accessible traffic patterns for all resident rooms.

D. Toilets, bathing and toileting appliances shall be equipped for use by multiple handicapped residents.

E. There shall be at least one toilet of appropriate size for every four clients:

1. Each toilet shall be equipped with a toilet seat and toilet tissue.

~~2. Toilet tissue shall be readily accessible at each toilet.~~

~~3. 2.~~ Separate toilet facilities with hand washing must be provided for staff.

F. There shall be at least one hand washing sink for every four clients. Hand washing facilities shall be readily accessible to residents and staff. Hand washing facilities shall be provided in each resident room or located in an adjoining toilet room available at a reasonable distance from the resident room.

G. There shall be at least one tub or shower equipped with grip bars and slip resistant surfaces for every four residents. At least one shower must be handicapped accessible without curbs.

H. Wash basins shall be available in or immediately adjacent to bathrooms and toilet rooms.

~~I. Shower and tub areas shall be equipped with grab bars and slip resistant surfaces.~~

J. I. Bathroom areas shall be equipped with mirrors

for personal grooming. Mirrors shall be installed in such a way to minimize the danger or breakage.

#### 62.410 Day Room and Dining Area:

~~B. A.~~ There shall be at least 30 square feet per client within the house, not including client bedrooms, for recreation, dining and program activities.

~~A. B.~~ When a multi-purpose room is used for dining and recreation, it shall have sufficient space to accommodate all activities and to prevent interference ~~with each other among activities.~~

C. Basement space may be used for recreation activities if there are a minimum of two fire exits.

D. Appropriate leisure and mealtime furniture, as well as comfortable seating shall be provided for each resident.

#### 62.411 Kitchen and Pantry/Storage Areas:

A. The kitchen shall provide sufficient space to carry out proper food preparation and dishwashing operations and shall have:

1. Walls, floors and counters with coverings which are easily cleaned and impervious to water ~~to the level of splash.~~ Food contact surfaces, utensils and equipment shall be of approved material, cleanable and shall be kept in good repair.

2. At least one (1) refrigerator in proper working order, capable of maintaining foods at 41°F, or below, as determined in the warmest part of the refrigerator, and one (1) freezing unit, in proper working order capable of maintaining frozen foods in a continuous frozen state.

3. At least one (1) four burner range and one (1) oven which are in proper working order.

4. A dishwasher shall be provided to effectively remove food sod and soaps or detergents from dishes, utensils and equipment used in food storage, preparation and service. The dishwasher must be supplied with hot water of 165°F. If a dishwasher is not used, dishes, equipment, and utensils shall first be washed, next rinsed, and then sanitized according to the following:

a. Immersion for at least one-half (1/2) minute in clean, hot water of a temperature of at least 170°F;

b. Immersion for at least one (1) minute in a clean solution containing at least fifty (50) parts per million of available chlorine as a hypochlorite (household bleach or the equivalent) and having a temperature of at least 75°F.

B. Cleaned dishes, utensils and equipment shall be stored in a clean dry area protected from contamination by splash, dust or other means.

#### 62.412 Sanitation and Housekeeping:

A. All rooms and every part of the building shall be kept clean, orderly and free of offensive odors.

B. Policy manuals shall be prepared and followed which outline maintenance and cleaning procedures safe

storage of cleaning materials and pesticides and other potentially toxic materials, and safe storage and handling of linen and other matters which pertain to the comfort and safety of the residents.

C. There shall be a minimum of three sets of towels, washcloths, sheets and pillowcases for each resident which shall be changed at least weekly or whenever soiled.

D. There shall be separate areas for storage of

1. Food items.
2. Cleaning agents, disinfectants and polishes.
3. Poisons, chemicals and pesticides.
4. Eating, serving and cooking utensils.

E. A ventilated janitors closet must be provided containing a service sink for storage and use of housekeeping items. ~~Chemicals and disinfection agents shall be stored separate from resident care items and food.~~

F. Laundry processing must limit the handling of laundry and must utilize universal precautions in the handling of all soiled laundry.

1. On-site laundry processing area must include:

a. One room with areas for receiving, sorting, and washing of soiled linen. Washers must be supplied with hot water of 160°F. Room must be properly ventilated with air flow under negative pressure in relation to adjacent areas.

b. One room for drying and folding of clean linen. Room must have hand washing immediately accessible and be properly ventilated with air flow under positive pressure in relation to adjacent areas.

2. Off-site laundry processing must comply with the following:

a. A contract with a commercial laundry must be obtained for the proper processing of soiled linen.

b. A property ventilated soiled linen holding room (ventilated directly outside, with an air flow under negative pressure) or a designated area in the soiled utility room shall be provided for the storage of soiled linen.

c. A clean linen storage closet sufficient for the storage of clean linen must be provided.

G. Soiled utility room for storage of regulated infectious waste, sharps and disposal of body fluids must be provided and must contain a work counter, hand washing facilities, clinical sink or other bed pan cleaning device. This room must be properly ventilated directly outside with air flow under negative pressure in relation to adjacent area (10 total air exchanges per hour).

#### 62.413 Nursing Equipment and Supplies:

A. There shall be sufficient equipment and supplies for nursing care to meet the needs of each resident. It shall be the responsibility of the administrator to obtain specific items required for individual cases.

B. Over the bed tables shall be provided for

residents who may not be able to be served a meal in the dining room.

C. There shall be sufficient space and facilities available for the proper cleansing, disinfection, sterilization (if done on premises) and storage of nursing supplies and equipment.

D. A call system shall be provided for each resident. This system shall be accessible to each bed, each toilet room bathroom and shower room used by residents.

E. The facility shall maintain a scale on the premises which can accommodate the physical condition of each resident.

F. The group home provider shall provide bag and mask for assisted ventilation.

### SECTION 62.5 FIRE SAFETY

62.501 Fire safety in group homes shall comply with the adopted rules and regulations of the State Fire Prevention Commission. Enforcement of Fire Regulations is the responsibility of the State Fire Prevention Commission. All applications for a license or renewal of a license must include, with the application, a letter certifying compliance by the Fire Marshal having jurisdiction. Notification of noncompliance with the Rules and Regulations of the State Fire Prevention commission shall be grounds for revocation of a license.

62.502 There must be sufficient staff (a minimum of two) awake and on duty at all times including the night shift, to evacuate all residents in case of fire. More than two staff shall be on duty at all times if the Fire Marshal determines that more staff is required to evacuate residents timely in case of fire. ~~However, should all residents be ambulatory and capable of self-evacuation, only one nursing service personnel shall be required on duty at all times.~~

62.503 Residents and all staff on each shift shall be trained in executing the evacuation plan.

62.504 Evacuation drills must be held at least quarterly on each shift for all staff and residents.

### SECTION 62.6 PERSONNEL/ADMINISTRATIVE

62.601 There must be a licensee of the facility. The licensee must:

A. Exercise general policy, budget, and operating direction over the facility;

B. Appoint the administrator of the facility who shall have:

1. An associates degree or higher from an accredited college or university plus three (3) years experience in a health or human services field; or

2. A bachelor's degree or higher in a health, business, or related field and a minimum of one year's work experience in a health or human service field.

C. Insure all operations of the group home facility are conducted in accordance with these regulations and

applicable Federal, state and local laws and requirements.

62.602 The licensee and the administrator shall be responsible for complying with the regulations herein contained. In the absence of the administrator, a qualified substitute shall be authorized, in writing, to be in charge.

62.603 The administrator must be on duty and on site in the home a minimum of four (4) hours a day, five (5) days a week.

62.604 In addition to the staff engaged in the direct care and treatment of residents, there must be sufficient personnel to provide basic services such as: food service, laundry, housekeeping and plant maintenance. Nursing service personnel shall not be engaged in food service, laundry, housekeeping and plant maintenance.

62.605 All personnel shall submit to and pass a criminal background check and drug testing in accordance with Title 16 Del. C., Chapter 11, Subchapter IV., Criminal Background Checks and Mandatory Drug Testing.

~~62.605~~ 62.606 No employee shall be less than 18 years of age and no person shall be employed who has been convicted of a ~~crime where the victim was a person regardless of whether the crime was a felony or a misdemeanor~~ disqualifying crime as set forth in the Criminal Background Check regulations of the Division of Long Term Care Residents Protection.

~~62.606~~ 62.607 The facility shall have written personnel policies and procedures that adequately support sound resident care. Personnel records of each employee shall be kept current and available upon request by the Division of ~~Public Health~~ representatives and shall contain sufficient information to support placement in the positions to which assigned.

~~62.607~~ 62.608 Minimum requirements for employee physical examinations include:

~~A. Each person, including volunteers, who is involved in the care of residents shall have a screening test for tuberculosis as a prerequisite to employment and annually thereafter. Either a negative intradermal skin test or a chest x-ray showing no evidence of active tuberculosis shall satisfy this requirement. No person, including volunteers, found to have active tuberculosis in an infectious stage shall be permitted to give care or service to residents.~~

~~B. A report of this test shall be on file at the facility of employment.~~

A. The facility shall have on file results of tuberculin tests performed annually for all employees, including volunteers who are involved in the care of residents. The tuberculin test to be used is the Mantoux test containing 5 TU-PPD stabilized with Tween, injected intradermally, using a needle and syringe, usually on the volar surface of the forearm. Persons found to have a significant reaction (defined as 10 mm of induration or greater) to tests shall be reported to the Division of Public Health and managed according to recommended medical

practice. A tuberculin test as specified, done within the twelve months prior to employment or a chest x-ray showing no evidence of active tuberculosis shall satisfy this requirement for asymptomatic individuals. A report of this skin test shall be kept on file.

B. Employees who do not have a significant reaction to the initial tuberculin test (those individuals who have less than 10 mm induration) should be retested within 7 – 21 days to identify those who demonstrate delayed reactions. Tests done within one year of a previous test need not be repeated in 7 –21 days.

C. No person, including volunteers, found to have active tuberculosis in an infectious stage shall be permitted to give care and service to residents.

~~62.608~~ 62.609 Each applicant of a group home must have a medical evaluation for tuberculosis before being admitted to a group home. Any resident found to have active tuberculosis in an infectious stage may not be admitted or continue to reside in a group home.

~~62.609~~ 62.610 The licensee shall approve written policies and procedures pertaining to the services the group home provides. Such policies and procedures should reflect the philosophy and objectives of the home to provide on a continuing basis good medical, nursing and psychosocial care for all persons admitted to the home who require such care, Such policies and procedures shall reflect the requirements of Section 62.7 and include:

- A. Admission, transfer and discharge policies
- B. Categories of residents accepted or not accepted
- C. Physician services
- D. Nursing services
- E. Food and nutrition services including kitchen sanitation, food handling and storage
- F. Rehabilitative services
- G. Pharmaceutical services
- H. Diagnostic services
- I. Housekeeping services
- J. A written policy and procedure denoting care of residents
  - 1. In an emergency
  - 2. During a communicable disease episode
  - 3. In case of critical illness or mental disturbance
- K. Dental services
- L. Social services
- M. Resident activities, recreational, social, religious
- N. Clinical records
- O. Fire and safety policies
- P. Advance directives to include:
  - 1. On admission, inform residents in writing of their right 1) to accept or refuse treatment, 2) to give written instructions concerning their care and 3) to appoint

an agent or proxy to make health care decisions.

2. Documenting in medical records whether or not residents have executed advance directives.

3. Ensuring compliance with requirements of state law on advance directives.

4. Providing education for staff on issues concerning advance directives.

Q. Infection control.

### **SECTION 62.7 SERVICES TO RESIDENTS**

#### **62.701 Group Home Services:**

A. The group home, shall provide to all residents the care deemed necessary for their comfort, safety nutritional requirements and general well being

B. The group home shall have in effect a written transfer agreement with one (1) or more hospitals, which provides the basis for an effective working arrangement under which inpatient hospital care, or other hospital services, are available promptly to the facilities residents, when needed.

C. The group home shall have a written contract agreement for promptly obtaining required laboratory, x-ray and other diagnostic services. These services may be obtained from other facilities that meet applicable local, state and Federal laws and regulations.

D. The group home shall have arrangements for the provision of all other services and supplies to meet the health and psychosocial needs of each resident. Such arrangements may be other met by appropriately licensed facility staff or by contractual agreements with organizations or individuals licensed as applicable by the State of Delaware.

E. The group home shall immediately inform the attending or emergency physician, ~~his designee~~, registered nurse ~~or contracting agency providing nursing services to the resident~~, and if known, notify the resident's legal representative, interested family member, or other parties as designated by the resident when there is:

a) an accident involving the resident.

b) a significant change in the resident's physical, mental, or psychosocial status (i.e., a deterioration in health, mental or psychosocial status in either life threatening conditions or clinical complications);

c) a need to alter treatment significantly (i.e., a need to discontinue an existing form of treatment due to adverse consequences, or to commence a new form of treatment).

#### **62.702 Medical and Nursing Services:**

A. The group home shall provide for medical and nursing services either directly or through contract arrangements with organizations or individuals licensed as applicable by the State of Delaware.

B. All persons admitted to a group home shall be under the care of a licensed physician and shall be seen by

their attending physician at least every 30 days, unless Justified otherwise and documented by the attending physician.

C. All group homes shall arrange for one (1) or more licensed physicians to be called in an emergency. Names and phone numbers of these physicians shall be posted in a conspicuous location.

D. All orders for medications, treatments, diets, and diagnostic services shall be in writing and signed by the attending physician. Telephone orders shall be countersigned by the physician within fourteen (14) working days.

E. All statements of medical treatment goals and treatment plans shall be reviewed and updated as needed by the attending physician, to insure continuing appropriateness of the goals, consistency of management methods with the goals and the achievement of progress towards the goals.

F. A progress note shall be written and signed by the physician if he/she makes an on-site visit.

~~G. All telephone orders shall be accepted in the group home by a licensed nurse and shall be counter signed by the physician within five (5) working days.~~

H. G. The nursing services provided either directly or through contractual arrangements include:

1. An assessment of the resident upon admission, by a registered nurse and development of written resident care plans in conjunction with the physician and other professionals as needed.

a) Individual written resident care plans to meet the resident's needs shall be developed within seven (7) days of admission and reviewed at least every 62 days by registered nurses and other professional disciplines, as required.

b) In the event that there is a significant change in the resident's medical or psychosocial condition the care plan shall be modified to meet the needs of the resident.

2. The coordination and monitoring of resident care and services with the physician and other health professionals by a registered nurse who visits the group home at least weekly.

3. A supervisory visit to the group home at least every two weeks by a registered nurse who conducts an assessment of the care provided by the certified nurse assistants.

4. The administration of treatments and medications by licensed nurses in accordance with the Nurse Practice Act.

~~H. H.~~ There must be a sufficient number of trained personnel to provide for direct care of residents with a minimum of two (2) nursing service personnel on duty at all times. However, should all residents be ambulatory and capable of self-evacuation, only one nursing service personnel shall be required on duty at all times. Each nurse

assistant employed by the group home shall have met the training and testing requirements for certification and be registered in good standing on the Delaware Nurse Aide Registry.

62.703 Infection Control:

A. Prevention and Control Services

The facility shall establish and implement an infection prevention and control program. The Administrator shall ensure the development and implementation of the program.

The facility shall establish and implement written policies and procedures regarding infection prevention and control including, but not limited to:

1. Universal Precautions as established by the Centers for Disease Control and Prevention (CDC).

~~1.2.~~ A system for investigating, reporting, and evaluating the occurrence of all infections, diseases, or conditions which are reportable to the Division of Public Health that may be related to staff activities and procedures of the facility;

~~2.3.~~ Notifiable diseases shall be reported to the County Public Health Administrator;

~~3.4.~~ Care of residents with communicable diseases;

~~4.5.~~ Policies and procedures for exclusion from work and authorization to return to work for personnel with communicable diseases;

~~5.6.~~ Surveillance techniques to minimize sources and transmission of infection;

~~6.7.~~ Disinfection, cleaning and care practices and techniques used in the facility including, but not limited to the following:

a) Care of utensils, instruments, solutions, dressings, articles and surfaces;

b) Selection, storage, use and disposition of disposable and non-disposable resident care item;

c) Methods to ensure that sterilized materials are packaged and labeled to maintain sterility and to permit identification of expiration dates;

d) Procedures for care of equipment and other devices that provide a portal of entry for pathogenic micro-organisms;

e) Techniques to be used during each resident contact including hand washing before and after caring for a resident;

f) Criteria and procedures for isolation of residents.

g) All personnel shall receive orientation at the time of employment and annual in-service education regarding the infection prevention and control program

B. Infectious Disease and Waste Removal

The facility shall establish and implement policies and procedures for the collection, storage, handling and disposition of all pathological and infectious wastes

within the facility, and for the collection, storage, handling and disposition of all pathological and infectious wastes to be removed from the facility, including, but not limited to the following:

1. Needles and syringes and other solid, sharp, or rigid items shall be placed in a puncture resistant container and incinerated or compacted prior to disposal.

2. Needles and syringes shall be destroyed or disposed of in a safe and proper manner by an infectious waste hauler approved by the Department of Natural Resources and Environmental Control.

3. Non-rigid items, such as blood tubing and disposable equipment and supplies, shall be incinerated or placed in double, heavy duty, impervious plastic bags and disposed of by an infectious waste hauler approved by the Department of Natural Resources and Environmental Control.

4. Fecal matter and liquid waste, such as blood and blood products, shall be flushed into the sewage system or otherwise disposed of in accordance with federal, state and local standards or regulations.

5. All pathology specimens, tissue and waste, including gross and microscopic tissue removed surgically or by any other procedure and products of conception must be disposed of in compliance with OSHA (Occupational Safety and Health Administration), EPA (Environmental Protection Agency), DNREC (Department of Natural Resources and Environmental Control) and other state and local standards covering the treatment of medical waste.

6. Collection, storage, handling and disposition procedures of all pathological and infectious wastes within the facility shall meet the of all state and federal codes.

62.704 Medications:

A. All medication administered to residents shall be ordered in writing, dated and signed by the attending physician. All prescription medications shall be properly labeled in accordance with ~~Title 24 of the Delaware Pharmacy Laws and Regulations. 24 Del. C., Chapter 25 and the regulations of the Delaware Board of Pharmacy.~~ The label shall contain the following information:

1. The prescription number;

2. The date such drugs were originally dispensed to the resident;

3. The resident's full name;

4. The brand or established name and strength of the drug to the extent that it can be measured;

5. The physician's directions as found on the prescription;

6. The physician's name;

7. The name and address of the dispensing pharmacy or physician.

B. Medications may be self-administered or administered in accordance with the Nurse Practice Act.

Those residents who, upon admission, are incapable of self-administration or who become incapable of self-administration will have the medications administered according to the Nurse Practice Act.

C. The group home provider licensee shall maintain a record of all medication provided to a resident indicating time of day, type of medication, dose, route of self-administration/administration, by whom given and any reactions noted.

D. Medication Storage

1. Provisions for the locked storage of medications shall be provided. Medication storage area shall contain a work counter, refrigerator and hand sink. The key to the medication storage must be in the possession of or accessible only to personnel responsible for the distribution for self-administration/administration of medications. If secure storage of medications is provided in resident rooms for those residents capable of self-administration the key to the medication storage must be in the possession of the resident.

a) No stock supplies of drugs except those approved for the emergency drug kit and those commonly available without prescription (non-legend drugs), e.g., antacids, aspirin, laxatives, shall be kept in the facility.

b) Prescription medication not requiring refrigeration shall be kept in the original container stored in a locked cabinet or drawer, and clearly labeled for the specific resident. These medications shall be stored within the U.S.P. recommended temperature range of 59 - 86°F unless the manufacturer's labeling suggests otherwise.

c) Prescription medication requiring refrigeration shall be stored in a separate and secure locked container within the refrigerator. The temperature range must be maintained within U.S.P. requirements.

d) Schedule II substances/prescriptions shall be kept in separately locked, securely fixed boxes or drawers in the locked medication cabinet; hence, under two (2) locks.

Schedule II substances shall be handled in the manner outlined by the State and Federal laws and regulations. AD unused Schedule II substances shall be returned to the pharmacist for disposition.

e) Internal medications shall be stored separately from external medications.

2. The group home provider shall insure that prescription medication is not used by other than the resident for whom the medication was prescribed.

3. The group home provider is responsible for maintaining an adequate supply of medication at all times.

4. Prescription medication which is no longer needed by a resident shall be disposed of by a physician, pharmacist or other designee who must be a licensed medical

professional in accordance with Delaware ~~Pharmaceutical Board of Pharmacy~~ Regulations. All unused portions of any resident's discontinued or expired prescriptions shall be immediately isolated and destroyed or returned to the pharmacist or provider pharmacy supplying pharmaceutical services within 72 hours. The appropriate notation of such return or destruction, providing a quantity, description and date on the resident's medical administration record shall be provided. The person performing the return or destruction shall initial this document.

5. The facility may keep on the premises an emergency drug kit with quantities of medications approved by the Board of Pharmacy. These medications shall only be used by licensed physicians or licensed nurses in an emergency situation. Stocking of this kit shall be arranged with a pharmacist who checks the contents after use and/or periodically.

62.705 Food Service:

A. A minimum of three (3) meals or equivalent shall be served in each twenty-four (24) hour period. Meals shall be served at regular times comparable to normal mealtimes in the community. There must not be more than a fourteen (14) hour span between the evening meal and breakfast.

B. Meals shall provide nutrients and calories for each resident based upon compliance with current recommended dietary allowances of the Food and Nutrition Board of the National Academy of Sciences, National Research Council, except as ordered by a physician.

C. Food preparation methods that conserve nutrients shall be utilized. Excessive exposure to light, prolonged storage, and prolonged cooking in a large quantity of water shall be avoided.

D. Food shall be prepared so that it will have an appetizing aroma and appearance. Food shall be held and served at proper temperatures in accordance with the ~~U.S. Department of Health and Human Services' Food Code.~~ current Delaware Food Code.

E. Food shall be prepared in a form designated to meet individual needs.

F. When residents refuse food served, substitutes of similar nutritive value shall be offered.

G. Bedtime snacks shall be offered routinely to all residents to the extent medical orders permit.

H. Diets and nutritional supplements shall be saved as prescribed by the physician. Meal and supplement intake shall be monitored by nursing service personnel and recorded in each resident's clinical record.

I. A copy of a recent diet manual shall be available for planning therapeutic menus and as a resource.

J. Menus shall be planned in advance and a copy of the current week's menus shall be posted in the kitchen and in a public area.

1. Portion sizes shall be listed on a menu in

the food service area.

2. The names of fruit, vegetables or starch shall be specified on the menu (for example: orange juice, green beans, rice).

3. All menus, both regular and therapeutic, shall be approved by the dietitian.

K. Menus showing food actually served each day shall be kept on file for at least one (1) month. When changes in the menu are necessary, substitutions of similar nutritive value shall be provided.

L. A three (3) day supply of food shall be kept on the premises at all times.

~~M. Food shall be from approved sources. The use of home-canned foods is prohibited.~~

N. M. A suspected occurrence of food poisoning shall be reported immediately, by telephone, to the County Public Health Administrator.

#### 62.706 Nutrition Services

A. The facility must employ a dietitian directly or through contractual arrangements, either full time, part time or on a consultant basis, and provide on-site services to residents as needed.

B. The immediate nutritional needs of residents shall be addressed upon admission with consultation by the dietitian as needed. A comprehensive nutritional assessment which includes height and weight and an evaluation of calories, protein and fluid requirements shall be completed by the dietitian and updated and reviewed as indicated by the resident's condition.

C. The facility shall obtain residents' weights monthly or more often as needed.

D. Weight changes of 5 pounds or 5% of body weight in one month shall be reported to the physician and dietitian.

#### 62.707 Abuse, Neglect or Mistreatment of Residents

~~A. The group home A" follow all requirements set forth in subchapter III of the Delaware Code titled Abuse, Neglect or Mistreatment of Patients or Residents (16 Del.C. § 1131. et seq.). The facility shall report incidents of abuse, neglect or mistreatment of residents to the Department of Health and Social Services as set forth in the Rules and Regulations Governing Delaware's Patient Abuse Law.~~

~~B. In addition the group home shall immediately report to the Office of Health Facilities Licensing and Certification alleged violations regarding abuse, mistreatment, neglect, injuries of unknown origin and misappropriation of property. These incidents shall be thoroughly investigated by the group home and the results of the thorough investigation shall be reported to the Office of Health Facilities Licensing and Certification, within 5 days of the alleged incident.~~

#### 62.708 62.707 Records and Reports:

A. There shall be a separate clinical record maintained at the group home on each resident which shall

be a chronological history of the resident's stay in the group home. Each resident's records shall contain:

1. Admission record: Including resident's name, birth date, home address prior to entering the facility, identification numbers, such as social security, Medicaid, Medicare, date of admission, physician's name, address and phone number, admitting diagnosis, next of kin (relationship, name, address and phone number).

2. History and physical examination: Prepared by physician within seven (7) days of the resident's admission. A summary and history which was prepared at the hospital and the resident's physician examination which was performed at the hospital, if performed within seven (7) days prior to admission to the home, may be substituted. Additionally, a record of an annual medical evaluation performed by a physician must be contained in each resident's file.

3. Statement of complete diagnosis and prognosis.

4. Physician's orders shall include:

a) Complete list of medications, medication name, dosage, frequency and route of administration, indication for usage;

b) If "as needed" medications are ordered, the reason why the resident takes the medication and the maximum dose in a 24 hour period;

c) Treatments, diets and level of permitted activity.

5. Physician's progress notes with each on-site visit. If medical services are obtained in the physician's office a summary including diagnosis and prognosis, changes in medication mid therapy and necessary follow-up will be provided.

6. Nursing notes, shall be recorded by each person providing professional nursing services to the resident, indicating date, time, scope of service provided and signed by the provider of the service.

7. Medication sheets: Including medication, name, dosage, frequency and route of administration, space for the resident to record his/her initials if medication is self-administered or for recording the initials of the medical professional authorized and responsible for administration of the medication.

8. Inventory of personal effects both upon admission and at time of transfer and/or discharge.

9. For discharged or transferred residents, the records shall contain the following:

a. A discharge summary containing the:

1. Date and time of discharge,

2. Place to which the resident was

discharged;

3. Condition of resident at time of

discharge.

b. The resident's written consent for

discharge or discharge order from the resident's physician.

c. Copies of the name of the resident's guardian, powers of attorney and advance directives, if applicable.

10. Special service notes: e.g., social services and activities, results of special consultations, requested by the physician such as physical therapy, dental and podiatry if services are provided in the group home.

11. Nutrition progress notes.

12. Copy of an interagency transfer form if the resident was admitted from an acute care facility or any other long term care facility or transferred to an acute care or other type of health care facility.

~~13. Advance Directives: any written advance directives signed by residents shall accompany the resident upon transfer to another health care facility.~~

~~14. 13.~~ Documentation of the percentage of intake for each meal.

~~15. 14.~~ Recording of weights obtained including the date the weight was obtained.

~~16. 15.~~ Laboratory work, special tests, and x-rays ordered by the physician.

B. Records shall be available at all times to legally authorized persons; otherwise, such records shall be held confidential.

C. Clinical records shall be retained for five (5) years from the date of discharge.

D. Should the facility cease operation, all resident records shall be transferred with the resident to another home or facility, with written receipt acknowledging the transfer which shall be signed by the resident and the new administrator.

E. If a facility ceases operation, arrangements shall be made to retain discharge records for five (5) years following closure.

F. ~~Incident/accident reports, with adequate documentation & shall be completed for each accident, injury or unusual incident. Adequate documentation shall consist of the name of the resident(s) involved, a description of the accident, injury or unusual incident, a list of the parties involved, the nature of any injuries, the location of the accident (on the premises or off), time of injury, disposition of resident(s) and notice that physician and family have been contacted. Incident/accident reports shall be kept on file in the facility. A copy shall be included in the residents clinical record.~~ Incident reports, with adequate documentation, shall be completed for each incident. Adequate documentation shall consist of the name of the resident(s) involved; the date, time and place of the incident; a description of the incident; a list of other parties involved, including witnesses; the nature of any injuries; resident outcome; and follow-up action, including notification of the resident's representative or family, attending physician and licensing or law enforcement authorities when appropriate.

Incident reports shall be kept on file in the facility. Reportable incidents shall be communicated immediately to the Division of Long Term Care Residents Protection, 3 Mill Road, Suite 308, Wilmington, DE 19806; phone number: 1-877-453-0012; fax number: 1-877-264-8516.

## **SECTION 62.8 WAIVER OF STANDARDS**

62.801 Specific standards may be waived by the Division of ~~Public Health~~ provided that each of the following conditions are met:

~~1. A.~~ Strict enforcement of the standard would result in unreasonable hardship on the group home.

~~2. B.~~ The waiver is in accordance with the particular needs of any resident of the group home.

~~3. C.~~ A waiver must not adversely affect the health, safety, welfare, or rights of any resident of the group home.

~~4. D.~~ The request for a waiver must be made to the Division of ~~Public Health~~ in writing by the group home with substantial detail justifying the request.

~~5. E.~~ Prior to filing a request for a waiver, the facility shall provide written notice of the request to each resident, each court-appointed guardian of any resident, each person appointed in the durable power of attorney of any resident, each person appointed to be any resident's health care agent under the Death with Dignity Act and each spouse and adult child of any resident. Prior to filing a request for a waiver, the facility shall also provide written notice of the request to the Office of Long Term Care Ombudsman. The notice shall state that the recipient has the right to object to the waiver request in writing to the Division. ~~of Public Health.~~

~~Upon filing the request for a waiver, the group home shall submit to the Office of Health Facilities Licensing and Certification a copy of the notice and a sworn affidavit outlining the method by which the requirement was met. The facility shall maintain proof of the method by which the requirement was met by the group home for the duration of the waiver and make such proof available upon the request of the Division of Public Health or its agents.~~

~~6. F.~~ A waiver granted by the Division of ~~Public Health~~ is not transferable to another group home in the event of a change of ownership.

~~7. G.~~ A waiver shall be granted for a period up to the term of the license.

## **APPENDIX A**

~~These regulations are adopted by the Director, Division of Public Health pursuant to 16 Del. C. 1121, 1122, 1123.~~

## **PATIENT'S BILL OF RIGHTS**

**RESPECT**

1. Every patient and resident shall be treated with consideration, respect and full recognition of their dignity and individuality.

2. Every patient and resident shall receive care, treatment and services which are adequate and appropriate.

**SERVICES AND PAYMENT**

3. Each patient and resident and their families shall, prior to or upon admission, and during their stay, receive a written statement of the services provided by the facility including those required to be offered on an "as-needed" basis.

A. They shall also receive a statement of related charges, including any charges for services not covered under Medicare, Medicaid or the facility's basic per them rate.

B. Upon receiving such statement, the patient and his representative shall sign a written receipt which shall be retained by the facility.

**TREATMENT**

4. Each patient shall receive from the attending physician or resident physician of the facility, in lay terms, complete and current information regarding his diagnosis, treatment and prognosis, unless medically inadvisable.

5. Each patient and resident:

A. Shall participate in the planning of their medical treatment;

B. May refuse medication or treatment;

C. Shall be informed of the medical consequences of all medication and treatment alternatives; and

D. Shall give prior informed consent to participation in any experimental research, which shall be verified by his signature and the signature of a family member or representative.

6. The facility shall see to it that the name, address and telephone number of the patient or resident's physician is readily accessible to them at their bedside.

7. Each patient and resident's medical care program shall be conducted discreetly and in accordance with the patient's need for privacy.

A. Persons not directly involved in patient care shall not be present during medical examinations, treatment and case discussion.

B. Personal and medical records shall be treated confidentially; shall not be made public without the consent of the patient or resident; shall not be released to any person inside or outside the facility who has no demonstrable need for such records.

8. Every patient and resident shall be free from mental and physical abuse and also from chemical and physical restraints, unless authorized by a physician according to clear and indicated medical requirement.

**COMMUNICATIONS**

9. Every patient and resident shall receive from the Administrator or staff of the facility a courteous and reasonable response to his requests.

10. Every patient and resident shall be provided with information as to any relationships of the facility to other health care facilities as far as the patient's care is concerned.

11. To maintain reasonable continuity of care, every patient and resident at the least shall be informed of the availability of physicians and appointment times.

12. Every patient and resident may associate privately with people and groups of his own choice at any reasonable hour.

A. May send and receive mail promptly and unopened.

B. Shall have access to any reasonable hour to a telephone where he may speak privately.

C. Shall have access to writing instruments, stationery and postage.

**CONTROL OF FINANCIAL AFFAIRS**

13. Each patient and resident has the right to manage his own financial affairs.

A. If, by written request, the facility manages the patient's financial affairs, it shall have available for inspection a monthly accounting and shall furnish a quarterly statement upon request to the patient or a designated representative.

B. The patient and resident shall have unrestricted access to such accounts at reasonable hours.

**PRIVACY**

14. If married, every patient and resident shall enjoy privacy in visits by his spouse and, if both reside in the facility, they shall be allowed to share a room, unless medically contraindicated.

15. Every patient and resident has the right of privacy in their room and the facility's staff shall respect this right by knocking on the door before entering the room.

**GRIEVANCES**

16. Every patient and resident has the right, personally, or through others, to present grievances to the Division of Aging, the Ombudsman or to others.

A. There shall be no reprisal, restraint, interference, coercion or discrimination of the patient as a result of such grievance or suggestion.

B. Any alleged violation of any of the provisions of these Rules and Regulations should be presented orally or in writing and forwarded to the attention of the Ombudsman.

C. The Ombudsman shall consult with the complainant to determine if he/she wishes to pursue an investigation. If the complainant wishes to pursue the matter, the Ombudsman shall work closely with the complainant and

the institution to resolve the matter. In any case, the confidentiality of the complainant shall not be revealed without his/her consent.

D. on completion of the investigation, the Ombudsman shall report the findings to the complainant and with the complainant's consent to the facility wherein the complaint originated.

E. If the grievance is not resolved at the end of the investigation by the Ombudsman, the grievance findings shall be forwarded to the State Board of Health for appropriate action after obtaining the consent of the complainant.

### PERSONAL CHOICE/PERSONAL PROPERTY

17. A patient or resident shall not be required to perform services for the facility.

18. Every patient and resident shall have the right to retain and use their personal clothing and possessions where reasonable and shall be entitled to have security in their storage and use.

### TRANSFERS/DISCHARGES

19. No patient or resident, shall be transferred or discharged from a facility except for the following:

- A. For medical reasons;
- B. For the patient's own welfare or the welfare of the other patients; and
- C. For non-payment of justified charges.

20. If good cause exists, the patient or resident shall be given 30 days advance notice of the proposed action and the reasons for the action and may request an impartial hearing. In emergency situations, such notice need not be given.

21. If a hearing is requested, it shall be held within ten (10) working days of the request. The hearing shall be conducted by the Division of Public Health. Hearing officers could include:

- A. Nursing Home Ombudsman;
- B. A staff member of the advocacy section, Division of Aging;
- C. A physician from the Division of Public Health, not employed by a hospital operated by the Division.
- D. The licensure program director for the type of home involved.

The Deputy Attorney General for the Division of Public Health may attend as legal officer in these hearings.

22. If the hearing determines in favor of the patient, the home shall be instructed to comply. If the home refuses to comply, the matter will be referred to the Attorney General's Office to see if further action is called for or permissible under the law.

### DEVOLUTION OF RIGHTS

Where consistent with the above rights, all rights,

particularly as they pertain to a patient adjudicated incompetent, a patient determined to be medically incompetent by his attending physician or a patient unable to communicate, shall devolve to that patient's next of kin, guardian, representative, sponsoring agency or representative payee (except where the facility is the representative payee).

### NOTICE—AWARENESS OF RIGHTS

I. These provisions shall be posted conspicuously in a public place in each facility.

II. Copies are to be furnished to the patient or resident upon admission and to all current patients and residents and next of kin, guardian, representative, sponsoring agency or two representative payee.

III. Receipts for the statement signed by the above parties shall be retained in the facilities files.

Revised May 27, 1982

### APPENDIX B

#### Notifiable Diseases

- |  |                                  |
|--|----------------------------------|
| 1. Acquired Immune Deficiency Syndrome | 41. Rubella                      |
| 2. Amebiasis                           | 42. Rubella, Congenital Syndrome |
| 3. Anthrax                             | 43. Salmonellosis                |
| 4. Botulism                            | 44. Shigellosis                  |
| 5. Brucellosis                         | 45. Smallpox                     |
| 6. Campylobacteriosis                  | 46. Syphilis                     |
| 7. Chaneroid                           | 47. Tetanus                      |
| 8. Chlamydia trachomatis infections    | 48. Toxic Shock Syndrome         |
| 9. Cholera                             | 49. Trichinosis                  |
| 10. Condylomata acuminata              | 50. Tuberculosis                 |
| 11. Diphtheria                         | 51. Tularemia                    |
| 12. Encephalitis                       | 52. Typhoid Fever                |
| 13. Foodborne Disease Outbreaks        | 53. Typhus Fever                 |
| 14. Giardiasis                         | 54. Vaccine Adverse Reactions    |
| 15. Gonococcal Infections              | 55. Waterborne Disease Outbreaks |
| 16. Granuloma Inguinale                | 56. Yellow Fever                 |
| 17. Hansen's Disease (Leprosy)         |                                  |
| 18. Hepatitis (Viral all types)        |                                  |
| 19. Herpes                             |                                  |
| 20. Histoplasmosis                     | Also, any unusual disease and    |
| 21. Human Immunodeficiency Virus (HIV) | adverse reaction to vaccine.     |
| 22. Influenza                          |                                  |
| 23. Lead Poisoning                     |                                  |
| 24. Legionnaires Disease               |                                  |
| 25. Leptospirosis                      |                                  |
| 26. Lyme Disease                       | County Health Offices:           |

27. Lymphogranuloma Venereum	
28. Malaria	New Castle County 9958632
29. Measles	
30. Meningitis (Bacterial)	Kent County 7395305
31. Meningitis (Aseptic)	
32. Meningococcal Disease (Other)	Sussex County 8565355
33. Mumps	
34. Pertussis	
35. Plague	
36. Poliomyelitis	
37. Psittacosis	
38. Rabies (man, animal)	
39. Reye's Syndrome	
40. Rocky Mountain Spotted Fever	

<u>Leptospirosis</u>	<u>Typhoid Fever (T)</u>
<u>Lyme Disease</u>	<u>Vaccine Adverse</u>
<u>Lymphogranuloma Venereum (S)</u>	<u>Reactions</u>
	<u>Varicella</u>
	<u>Waterborne Disease</u>
	<u>Outbreaks (T)</u>
	<u>Yellow Fever (T)</u>

Also, any unusual disease and adverse reaction to vaccine

County Health Offices:  
New Castle County 995-8632  
Kent County 739-5305  
Sussex County 856-5355

(T) report by rapid means  
(N) report in number only when so requested

For all diseases not marked by (T) or (N):

(S) – sexually transmitted disease, report  
required in 1 day

Others – report required in 2 days

**PART II**  
**APPENDIX A**  
**Notifiable Diseases**

<u>Acquired Immune Deficiency Syndrome (S)</u>	<u>Malaria</u>
<u>Anthrax (T)</u>	<u>Measles(T)</u>
<u>Botulism (T)</u>	<u>Meningitis (all types other than meningoccal)</u>
<u>Brucellosis</u>	<u>Meningococcal</u>
<u>Campylobacteriosis</u>	<u>infections (all types) (T)</u>
<u>Chancroid (S)</u>	<u>Mumps (T)</u>
<u>Chlamydia trachomatis infections(S)</u>	<u>Pelvic Inflammatory Disease (resulting from gonococcal and/or chlamydial infections) (S)</u>
<u>Cholera</u>	
<u>Cryptosporidiosis</u>	
<u>Cyclosporidiosis</u>	
<u>Diphtheria (T)</u>	<u>Pertussis (T)</u>
<u>E. Coli 0157:H7 infection (T)</u>	<u>Plague (T)</u>
<u>Encephalitis</u>	<u>Poliomyelitis (T)</u>
<u>Ehrlichiosis</u>	<u>Psittacosis</u>
<u>Foodborne Disease Outbreaks (T)</u>	<u>Rabies (man, animal)(T)</u>
<u>Giardiasis</u>	<u>Reye's Syndrome</u>
<u>Gonococcal infections (S)</u>	<u>Rocky Mountain Spotted Fever</u>
<u>Granuloma Inguinale (S)</u>	<u>Rubella (T)</u>
<u>Hansen's Disease (Leprosy)</u>	<u>Rubella (congenital)(T)</u>
<u>Hantavirus infection (T)</u>	<u>Salmonellosis</u>
<u>Hemolytic uremic syndrome (HUS)</u>	<u>Shigellosis</u>
<u>Hepatitis A (T)</u>	<u>Smallpox (T)</u>
<u>Hepatitis B (S)</u>	<u>Streptococcal disease (invasive group A)</u>
<u>Hepatitis C &amp; unspecified</u>	<u>Streptococcal toxic shock syndrome (STSS)</u>
<u>Herpes (congenital) (S)</u>	<u>Syphilis (S)</u>
<u>Herpes (genital) (N)</u>	<u>Syphilis (congenital) (T)</u>
<u>Histoplasmosis</u>	<u>Tetanus</u>
<u>Human Immunodeficiency Virus (HIV) (N)</u>	<u>Toxic Shock Syndrome</u>
<u>Human papillomavirus (genital warts) (N)</u>	<u>Trichinosis</u>
<u>Influenza (N)</u>	<u>Tuberculosis</u>
<u>Lead Poisoning</u>	<u>Tularemia</u>
<u>Legionnaires Disease</u>	

**APPENDIX B**

**DRUG RESISTANT ORGANISMS REQUIRED TO BE REPORTED**

Staphylococcus aureus intermediate or resistance to Vancomycin (MIC > 8 ug/ml)

Streptococcus pneumoniae drug resistant, invasive disease

**DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 505 (31 Del.C. §505)

**Nature of the Proceedings:**

The Delaware Department of Health and Social Services ("Department") / Division of Social Services / Food Stamp Program initiated proceedings to amend policies to implement policy changes to the following section of the Division of Social Services Manual: Section 9089, regarding Delaware's A Better Chance (DABC) and/or General Assistance (GA) Food Stamp Households. Summary of change: removes language about shortening of certification periods, which are no longer allowed and corrects policy number change from 7004.3 to 9089. This rule implements several provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and amended by the Omnibus Consolidated Appropriations Act of 1997 (OCA), the Balanced Budget Act of 1997 (BBA), and the Agricultural Research, Extension and Education

Reform Act of 1998 (AREERA). The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the September, 2001 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 30, 2001 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No written or verbal comments were received relating to this proposed rule

**Findings of Fact:**

The Department finds that the proposed changes as set forth in the September, 2001 Register of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed regulation related to the Food Stamp Program Reporting Requirements for Delaware's A Better Chance and/or General Assistance Households is adopted and shall be final effective November 10, 2001.

Vincent P. Meconi, Secretary, DHSS  
10.15.2001

~~[7004.3]~~ [9089] DABC and/or GA Food Stamp Households [273.12(f)]

DABC and/or GA households have the same reporting requirements as any other food stamp households. Whenever an DABC and/or GA household reports a change, adjustments must be made in the household's eligibility status or allotment for the months determined appropriate given the household's budgeting cycle.

Notify households whenever their benefits are altered as a result of changes in the DABC and/or GA benefits, ~~or whenever the food stamp certification period is shortened to reflect changes in the household's circumstances. If the certification period is shortened, the household's certification period must not end any earlier than the month following the month in which DSS determines that the certification period should be shortened, allowing adequate time to send a notice of expiration and for the household to timely reapply.~~ If the DABC and/or GA benefits are terminated but the household is still eligible for food stamp benefits, advise household members of food stamp work registration requirements, if applicable, as their First Step registration exemption no longer applies.

Whenever a change results in the reduction or termination of a household's DABC and/or GA benefits

within its food stamp certification period, and DSS has sufficient information to determine how the change affects the household's food stamp eligibility and benefit level, take the following actions:

- If a change in household circumstances requires both reduction or termination in the DABC and/or GA payment and a reduction or termination in food stamp benefits, issue a single notice of adverse action for both the DABC and/or GA and food stamp actions. If the household requests a fair hearing within the period provided by the notice of adverse action, continue the household's food stamp benefit on the basis authorized immediately prior to sending the notice. If the fair hearing is requested for both programs' benefits, conduct the hearing according to DABC and/or GA procedures and timeliness standards. The household must reapply for food stamp benefits if the food stamp certification period expires before the fair hearing process is completed. If the household does not appeal, make the change effective in accordance with the procedures in DSSM 9085.2.
- If the household's food stamp benefits will be increased as a result of a reduction or termination of DABC and/or GA benefits, the household's food stamp benefits must continue at the previous basis. If the household does not appeal, make the change effective in accordance with the procedures specified in DSSM 9085.2, except calculate the time limits for action from the date the DABC and/or GA notice of adverse action period expires.

Whenever a change results in the termination of a household's DABC and/or GA benefits within its food stamp certification period, and DSS does not have sufficient information to determine how the change affects the household's food stamp eligibility and benefit level (such as when an absent parent returns to a household, rendering the household categorically ineligible for DABC and/or GA, and DSS has no information on the income of the new household member), take the following action:

- 1) Where a DABC and/or GA notice of adverse action has been sent, wait until the household's notice of adverse action period expires or until the household requests a fair hearing, whichever occurs first. If the household requests a fair hearing and its DABC and/or GA benefits are continued pending the appeal, the household's food stamp benefits will be continued at the same basis.
- 2) If an DABC and/or GA notice of adverse action is not required, or the household decides not to request a fair hearing and continuation of its DABC and/or GA benefits, send the household a Form 105 requesting the verification needed to determine the household's continued food stamp eligibility notice of expiration and that it must reapply if it wishes to continue to participate. Explain to the household

that its certification period will expire at the end of the month following the month the notice of expiration is sent and that it must reapply if it wishes to continue to participate. Explain to the household that its certification period is expiring because of changes in its circumstances that may affect its food stamp eligibility and benefit level. Give the household at least ten (10) days to provide the necessary verifications. Take the necessary action to adjust or terminate the food stamps based on the rules regarding processing reported changes per DSSM 9085.

### **DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 505 (31 Del.C. §505)

#### **Nature of the Proceedings:**

The Delaware Department of Health and Social Services ("Department") / Division of Social Services / Medicaid/Medical Assistance Program initiated proceedings to amend policies related to the Division of Social Services Manual Sections 17170.2 and 17170.3. The first of two changes cite 20 CFR 416.924 as a more specific rule for children. The second change includes a statement of who performs the disability rules. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the June, 2001 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by June 30, 2001 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No written or verbal comments were received relating to this proposed rule.

#### **Findings Of Fact:**

The Department finds that the proposed changes as set forth in the June, 2001 Register of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed regulations of Section 4913 Disabled Children's Program are adopted and shall be final effective November 10, 2001.

Vincent P. Meconi, Secretary, DHSS  
10.15.2001

### **17170 Section 4913 Disabled Children**

Section 4913 of The Balanced Budget Act (BBA) provides that children who were receiving SSI payments on August 22, 1996, and who but for the enactment of the new disability definition under § 211(a) of the Personal Responsibility and Work Opportunity Act of 1996 (PRWORA), would continue to be paid SSI, are mandatory categorically eligible for Medicaid. This provision is effective for those children who lose their SSI payment on or after July 1, 1997.

#### **17170.1 Technical Eligibility**

The child must meet all of the following requirements:

(a) The child was being paid SSI on August 22, 1996. This includes children who, as of August 22, 1996, were in current pay status, had received favorable or partially favorable administrative decisions, or had a Zebley appeal pending.

(b) The child's SSI payment stopped on or after July 1, 1997.

(c) The decision to stop SSI payments was due to a determination that the child does not meet the definition of disability enacted on August 22, 1996, at § 211(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(d) The child would, except for the disability determination described in (c), continue to be paid SSI.

A child, who was not receiving SSI on August 22, 1996, is not protected by Section 4913. A child who loses SSI after August 22, 1996, for a nondisability reason is also not protected by Section 4913. If either of these two situations occur, a redetermination of Medicaid eligibility for the child under another eligibility group will be done.

#### **17170.2 Disability Determination**

The redetermination of disability will follow the rules in ~~20 CFR 416.920-930~~ 20 CFR 416.924 - 924e as in effect on April 1, 1996. A contractor who is competent to perform the redetermination of disability will be used.

#### **17170.3 Continuing Disability Reviews**

The rules in ~~20 CFR 416.990~~ 20 CFR 416.994a as published on April 1, 1996, will be used with the following modifications to the frequency of review:

(a) Review disability after, at most, 18 months if medical improvement is expected.

(b) Review disability after, at most, 3 years if disability is not permanent but medical improvement cannot be predicted.

(c) Review disability after, at most, 7 years if disability is permanent.

A contractor who is competent to perform the continuing disability reviews will be used.

#### **17170.4 Financial Eligibility**

Follow the SSI income and resource standards and methodologies.

**17170.5 Continued Eligibility**

Medicaid eligibility for children covered under this provision continues until the earlier of:

- a) the child reaches age 18
- b) the child no longer meets the criteria of the SSI program for payment of benefits (other than the post August 22, 1996, definition of disability for children). A child who ceases to meet the non-disability SSI eligibility criteria can recover coverage under Section 4913 if the child again meets the non-disability SSI criteria. However, a determination that the child is no longer disabled under the pre-PRWORA disability criteria will permanently bar the child from protected coverage under Section 4913.

c) the child is not eligible under another Medicaid eligibility group.

**17170.6 Redetermination of Eligibility**

A redetermination of the nondisability criteria is required at least every 12 months.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the September, 2001 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 30, 2001 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

One comment was received relating to this proposed rule.

**Summary of Information Submitted**

The State Council for Persons with Disabilities (SCPD) provided the following comment on the proposed regulation: "SCPD strongly endorses the proposed regulations because Council believes they are a major improvement over the former standards. The proposed regulations now include the following provisions:

- 1) eligibility approval predisposition in "close" cases (Sec. 2050, second paragraph);
- 2) clear program eligibility criteria (Sec. 25100);
- 3) comprehensive list of factors influencing level of care determination (Sec. 25250);
- 4) discrete definitions of each qualifying level of care (Sec. 25300);
- 5) comprehensive list of mental health-related level of care factors (Sec. 25300.5);
- 6) Division of Social Services' duty to reduce environmental deficits to home care (Sec. 25400); and
- 7) emphasis on solicitation of input from multiple medical, educational, and other sources (Sec. 25500)."

**Findings Of Fact:**

The Department finds that the proposed changes as set forth in the September, 2001 Register of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed regulations of the Medicaid/Medical Assistance Programs related to the Children's Community Alternative Disability Program are adopted and shall be final effective November 10, 2001.

Vincent P. Meconi, Secretary, DHSS  
10.15.2001

**~~17200 Disabled Children~~**

~~Effective 7/1/86, Medicaid coverage is available for certain disabled children who:~~

- ~~1. are age 18 and under who are living at home;~~
- ~~2. would be eligible, if in a medical institution,~~

~~for Medicaid and~~

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**DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 505 (31 Del.C. §505)

**Nature Of The Proceedings**

The Delaware Department of Health and Social Services ("Department") / Division of Social Services / Medicaid/Medical Assistance Programs initiated proceedings to amend policies to implement changes to the Division of Social Services Manual (DSSM). Changes in policy from the current policy DSSM 17200, Disabled Children Program to the new policy DSSM 25000, Children's Community Alternative Disability Program include the following:

- Statement of purpose of the program
- Eligibility criteria clarified
- Caregiver description provided
- Levels of care factors listed
- Definitions of specific level of care types
- Medical plan of care and costs determinations
- Cost effectiveness calculation
- Options when cost effectiveness exceed cost of institutional care.

The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

3. require a level of care provided in a hospital, skilled nursing facility, or intermediate care facility.

There must be medical documentation that it is appropriate to provide care for the child outside of an institutional setting, and the estimated amount which would be expended by Medicaid for the individual while he or she is living at home is not greater than the estimated amount which would otherwise be expended by Medicaid for the individual within an appropriate institution.

The medical documentation includes the Comprehensive Medical Report (MAP 25), the Medical Eligibility Fact Sheet (MAP 150), and the Attending Physician's Certification (MAP 151). Estimated costs of care are determined by the Medical Review Team based on the information provided on the MAP 150.

Essentially, any child who is disabled enough to require institutionalization may be eligible for Medicaid without regard to parental income, resources or other health insurance coverage. Effective 1/1/95, the child must have gross income at or below 250% of the current SSI standard and resources at or below the current SSI level.

#### 17200.1 Application Process

Referrals are usually received by phone from parents, social workers, physicians, etc. Medical forms are sent to the primary physician to be used in the Level of Care determination. An application form and face to face interview must be completed. It is preferable (but not required) for the child to be present at the interview. Home visits can be made if the family cannot come into the office. The face to face interview may be waived at the discretion of the supervisor.

NOTE: Effective 1/1/96, there is no 3 month retroactive coverage for children who, in the month of application, are eligible for enrollment in the Diamond State Health Plan.

During the interview the worker obtains information for the Social History and the Medical Cost Data form. Information obtained during the interview and worker's observations are sometimes critical in determining the eligibility of the child. The worker should include in the social history important factors that do not appear on the medical form.

#### 17200.2 Medical Eligibility

The DSS Medical Review Team will determine if the level of care is approved or disapproved. They may request additional information if a decision cannot be made with the information submitted. For disabled children who are not required to enroll in the *Diamond State Health Plan* (managed care), the worker may request that the level of care be approved effective three months retroactive from the month of the application. The following information must be submitted as a package to the Medical Review Team.

Form MAP 25: Comprehensive Medical Report

Form MAP 151: completed by the attending physician to assure that home care is appropriate.

Form MAP 150: completed by the Medicaid worker with the help of the family giving detailed analysis of medical needs, current cost of medical care, and health insurance coverage for those services.

#### 17200.3 Financial Eligibility

If the child is receiving SSI there is no need to apply for the Disabled Children's Program. This program does not provide any additional medical services above those received through SSI Medicaid.

All SSI regulations/policies and income and resource methodologies apply except the deeming of parental income and resources.

Consider only income and resources owned by the child. Any income received for the benefit of the child is considered owned by the child, i.e., child support, Social Security benefits, interest, etc. Exclude 1/3 of the child support payment amount before the income is included in the eligibility determination.

Monthly income must be at or below 250% of the current SSI standard. Resources owned by the child must be at or below the SSI resource limit. They include but are not limited to life insurance, bank accounts, U.S. savings bonds, trust funds. See Long Term Appendix for income and resource limits. (DSSM 20100.2 and DSSM 20300)

If the total face value of all life insurance policies is \$1500 or less, disregard the insurance as a countable resource. If the total face value of all life insurance policies exceeds \$1500, verify the cash surrender value and count it toward the resource limit. Resources may also be designated for burial.

See Long Term Care Section for more detailed information on SSI disregards and methodologies for income and resources.

#### 17200.4 Redetermination of Eligibility

Redeterminations must be completed annually. The redetermination must include a new determination of level of care (MAP 150, MAP 25) by the Medical Review Team and a detailed claims history for the preceding year showing Medicaid expenditures.

### **25000 CHILDREN'S COMMUNITY ALTERNATIVE DISABILITY PROGRAM (CCADP)**

This program was formerly known as the Disabled Children's Program and is based on 42 CFR §435.225.

#### **25050 PURPOSE**

The Children's Community Alternative Disability Program (CCADP) is a Delaware Medicaid option that is designed to serve children with significant disabilities. Such children would otherwise qualify to be cared for in an institutional setting. The State desires that this program serve as many children as possible at home or in non-institutional settings as long as it can be done safely, efficiently and economically. The best care for children who would be eligible for this program is with the support and

direction of involved parents or guardians. This care will generally result from the active collaboration of DSS, and multidisciplinary providers, and parents or guardians.

In general, any child whose disability profile meets a designated level of care may be eligible for Medicaid without regard to parental income, resources, or other health insurance. Given the State's commitment to promoting children's access to basic health care, any benefit of the doubt concerning program qualification should be resolved in favor of eligibility. To the extent eligibility is jeopardized by safety concerns, DSS will act affirmatively to eliminate or reduce unsafe conditions to an acceptable level through Departmental and community resources. DSS recognizes its responsibility to make a referral to a protective agency if conditions so warrant.

### **25100 ELIGIBILITY**

Medicaid eligibility is available to children who meet **ALL of the following seven (7) criteria** established by Federal regulation (42 CFR §435.225):

1. The child must be 18 years of age or younger (under age 19).
2. The child's countable resources do not exceed the SSI limit for a single individual described in DSSM §20300.
3. The child's countable income does not exceed 250% of the SSI benefit level.
4. The child's profile is consistent with the level of care of a hospital, Skilled Nursing Facility (SNF), Intermediate Care Facility (ICF), Intermediate Care Facility for Mental Retardation (ICF/MR), or Intermediate Care Facility Institution for Mental Disease (ICF/IMD).
5. The child must meet Supplemental Security Income (SSI) medical disability standards codified at 42 U.S.C. § 1382c(a) (presumptively met if child with chronic condition qualifies for SNF, ICF, ICF/MR, or ICF/IMD level of care).
6. It is appropriate to provide a comparable level of care in an alternative setting (e.g. natural family home).
7. The estimated Medicaid cost of care in the alternative setting is no higher than the estimated cost of the comparable facility-based level of care.

### **25150 APPROVAL DURATION AND REVIEW TIMETABLE**

Approval of an initial application is generally effective for a period not to exceed one year. Subject to DSSM 14950 (6 month guaranteed eligibility) if the Division is aware of the likelihood of a material change in financial or medical status, initial approval may be for a shorter period.

Redetermination of eligibility is expected to occur on at least an annual basis and may otherwise be prompted by notice of a material change in financial or medical status. Redetermination shall include a reassessment of whether the child meets all **seven eligibility criteria** (DSSM 25100). If a child manifests a chronic profile, the Division may utilize abbreviated reassessment forms and rely on previous

evaluations that remain clinically valid.

### **25200 CAREGIVER QUALIFICATIONS**

The primary person in charge of the care of a child, usually a family member or a designated health care professional meeting the following qualifications:

1. The individual must be willing to accept the responsibility of the care of the child.
2. The individual must be trained and/or display competence in the medical skill required by the child.

### **25250 GENERAL LEVEL OF CARE FACTORS**

1. The assessment of whether a child's profile is consistent with a qualifying level of care is influenced by multiple considerations. Material criteria include the following mental, physical, familial, and environmental factors:

- a. chronological and developmental age of child;
- b. nature and severity of disease or medical condition(s);
- c. symptomatology or functional limitations attributable to disease or medical condition (s);
- d. stability of disease process or medical condition(s);
- e. physical environment;
- f. availability and profile of primary caregiver(s);
- g. potential for harm, regression, or developmental delay in absence of services;
- h. extent of assistance necessary for child to engage in activities of daily living ("ADLs")
- i. extent of monitoring or supervision necessary to minimize potential for harm due to mental or physical health risks (e.g. suicide; elopement; self injurious behaviors; seizure); and
- j. extent to which professional or specialized personnel (e.g. nurse; therapist) are necessary to provide monitoring, assistance, or services.

2. Since some debilitating diseases and medical conditions (quadriplegia; profound mental retardation) are highly correlated with a qualifying level of care, the Division may adopt presumptive eligibility guidelines to expedite processing of such applications.

### **25300 SPECIFIC LEVEL OF CARE STANDARDS**

#### **25300.1 DEFINITION OF INSTITUTIONAL SETTING**

An institutional setting is a residential placement that provides room board and health related services, which are supervised by a licensed practitioner. The setting has the necessary professional personnel, equipment and facilities to meet the health and functional needs of the child on a continuing or repetitive basis and is authorized under State law to provide such care.

**25300.2 DEFINITION OF HOSPITAL LEVEL OF CARE**

A hospital is an institutional setting that provides medical, nursing and allied health care for acute or chronic illnesses. Such a setting includes at least daily physician intervention and the availability of around the clock professional nursing care. A hospital may provide general medical care or specialized care (e.g. psychiatric or rehabilitative).

**25300.3 DEFINITION OF SKILLED NURSING FACILITY LEVEL OF CARE**

Skilled nursing facility (SNF) is an institutional setting, which provides skilled nursing or rehabilitation, services for mental or physical conditions. Such a setting includes availability of around the clock professional nursing observation, assessment or intervention.

**25300.4 DEFINITION OF INTERMEDIATE NURSING FACILITY LEVEL OF CARE**

Intermediate care nursing facility (ICF) is an institutional setting in which nursing and allied health care and support services are provided. Such services are supervised by but not necessarily given by a licensed nurse.

**25300.5 DEFINITION OF ICF/IMD LEVEL OF CARE**

An intermediate care facility for mental disease (ICF/IMD) is a residential setting which offers comprehensive clinical and support services to persons with significant behavioral health disorders. Children who qualify for an ICF/IMD level of care exhibit a severe, complex, or chronic behavioral health disorder. Such disorder must compromise age-appropriate functioning in multiple areas and require frequent or intensive medical or behavioral interventions (e.g. drug therapy; professional counseling; behavior management techniques). Subject to full consideration of factors itemized in Section DSSM 25250), the presence of the following disability-related personal characteristics supports qualifications under an ICF/IMD level of care:

- a. impaired judgment or insight
- b. disorientation to time, place, or person
- c. memory impairment
- d. perceptual or thinking disturbance
- e. lack of self-regulation or impulse control
- f. diminished capacity to focus, concentrate, or maintain attention
- g. propensity to engage in verbal or physical aggression towards others
- h. marked changes in mood or affect
- i. marked withdrawal, isolation, or depression
- j. sleep disturbance
- k. appetite disturbance with change in weight
- l. marked difficulty in maintaining interpersonal relationships

- m. propensity to elope

**25300.6 DEFINITION OF ICF/MR LEVEL OF CARE**

An intermediate care facility for the mentally retarded (ICF/MR) is a residential setting which offers comprehensive habilitative and support services to persons with mental retardation or related conditions. Children who qualify for an ICF/MR level of care exhibit significant deficits in age-appropriate functioning in multiple domains. As a consequence, they require frequent assistance or supervision to competently or safely engage in activities of daily living (ADLs). Subject to full consideration of factors itemized in Section DSSM 25200, the presence of adaptive behavior deficits in the following contexts supports qualification under an ICF/MR level of care:

- a. self care skills
- b. domestic skills
- c. community skills
- d. self direction
- e. social interaction
- f. safety awareness
- g. receptive and expressive communication
- h. basic learning
- i. co-occurrence of physical or behavioral health disorder
- j. co-occurrence of alcohol or substance addiction or misuse

**25400 APPROPRIATENESS OF COMMUNITY-BASED SETTING**

Program eligibility is contingent upon a finding that non-institutional care is appropriate and services are available (DSSM 25100). The community-based setting must meet the child's needs safely and effectively to be appropriate. To fulfill this requirement, the Division will assess both the physical and social environment within the community-based setting. Given the State's strong preference for non-institutional care of children, denial of eligibility based on environmental deficits is disfavored. If eligibility is jeopardized by environmental deficits, the division will affirmatively attempt to eliminate or reduce such deficits to an acceptable level through Departmental and community resources.

**25500 DETERMINING MEDICAL PLAN OF CARE AND COSTS**

During the application and redetermination process, medical and social information is gathered from several sources including the primary caregivers, primary care practitioners, specialists and other health care providers, the schools, Child Development Watch (Part C) and/or other relevant sources. A listing of the services needed or currently being provided is recorded indicating whether there are ongoing costs (such as daily home health aides or

one-time costs (durable medical equipment). The cost for each are estimated as closely as possible and, to the extent possible, costs paid or defrayed by other insurance or other means of payment insurance settlement, donations, etc.) are deducted from the cost cap. Since Medicaid is generally payor of last resort [with exception of Individual with Disabilities Education Act (IDEA) services], the assessor may contact other potential payment sources to determine potential coverage especially when it appears the child might exceed the cost cap. Once the medical costs are computed the entire packet of assessment information is reviewed by the medial review team for the cost comparison and final eligibility determination.

#### **25600 COST EFFECTIVENESS CALCULATION**

A determination of cost effectiveness for the Children's Community Alternative Disability's Program must be made using the following procedures.

##### **25625 CALCULATION**

A calculation is made of the total actual or projected cost of all significant, recurring medical services (home health aides & nurses, private duty nursing, Prescribed Pediatric Extended Care, supplies, equipment and therapies).

##### **25650 ANNUALIZED COSTS CALCULATION**

The annualized costs of any significant recurring DME (e.g. specialized wheelchair or lift not included in facility per diem rate) is added to the calculation in DSSM 25625.

##### **25675 OTHER COSTS**

All other costs, such as physician services, pharmaceuticals, lab tests, x-rays, etc. are not part of medical facility costs, so will not be considered in the cost effectiveness determination except in cases where acute hospitalization is the appropriate comparable level of care.

#### **25700 COST DOES NOT EXCEED COMPARABLE MEDICAL FACILITY CARE**

The calculated cost in DSSM 25600 must not exceed 100% of comparable medical facility care. Comparable rates to be used are defined in the following subsections.

A. If the child is determined to meet the hospital LOC, the anticipated home services costs will be compared to the current fiscal year inpatient hospital rate of the AI DuPont Hospital for Children or alternate facility rate as determined by the Medicaid Director.

B. If a child is determined to meet the skilled LOC, the anticipated home services costs will be compared to the current averaged rate of participating Delaware nursing facilities that are caring for children under 18. A higher comparative rate based on the current averaged rate for children placed in subacute pediatric facilities may be applied for children determined "superskilled" by the DSS Medical Operation Administrator.

C. If a child is determined to meet ICF/MR/DD LOC, the anticipated home service costs will be compared to the current Stockley Center ICF/MR/DD rate or alternate facility rate as determined by the Medicaid Director.

D. If a child is determined to meet the ICF/IMD LOC, the anticipated home costs would be compared to the current Terry Center rate or alternate facility rate as determined by the Medicaid Director.

E. If a child is determined to meet an ICF LOC the anticipated home services costs will be compared to the current averaged rate of participating Delaware nursing facilities that are caring for children under 18 years of age.

#### **25800 COST EFFECTIVENESS EXCEEDS COST OF INSTITUTIONAL CARE**

When the cost effectiveness analysis shows that the cost of care in the home will exceed the cost of comparable institutional care, the parent or guardian will be offered a choice of the following options.

A. The use of less costly alternatives (such as privately contracting with LPNs or RNs for private duty nursing at a lower cost than can be obtained through an agency, purchasing refurbished, used equipment, etc.), or

B. The use of fewer units of service with assurances from parent/guardian that the remainder of medically necessary services will be provided by or paid for by other means, or

C. The admission to an appropriate medical facility, or

D. The withdrawal of the application for this program.

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## **DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL DIVISION OF AIR & WASTE MANAGEMENT**

Statutory Authority: 7 Delaware Code,  
Chapters 60, (7 Del.C. Ch. 60)

**Secretary's Order No.: 2001-A-0042**  
**RE: Proposed Regulation 24**  
**(Control of Volatile Organic Compounds Emissions)**  
**Section 11:**  
**- Mobile Equipment Repair and Refinishing -**

**Date of Issuance: October 10, 2001**

**Effective Date of the Amendment: November 11, 2001**

### **I. Background**

On Wednesday, August 29, 2001, a public hearing was held in the Priscilla Building Conference Room of DNREC

in Dover to receive comment on the proposed adoption of Regulation 24 (Control of Volatile Organic Compounds Emissions), Section 11 – Mobile Equipment Repair and Refinishing of the Regulations Governing the Control of Air Pollution. The proposed Regulation 24 – Section 11 – would apply to any person who applies coatings to mobile equipment, such as cars, trucks, and/or tractors for beautification or protection. This amended regulation, if adopted, establishes requirements for using improved transfer efficiency coating and application equipment, as well as spray gun cleaning techniques, and provides minimum training standards in the proper use of equipment and materials. The Department is proposing these regulations to aid Delaware in attaining compliance with the ground-level ozone standard set by the Environmental Protection Agency (EPA). Regulations similar to the aforementioned proposed Section 11 are being developed by other States in the region as well. Proper notice of the hearing was provided as required by law.

After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared his report and recommendation in the form of a Hearing Officer's Report to the Secretary dated October 5, 2001, and that memorandum is expressly incorporated herein by reference.

## II. Findings and Conclusions

On the basis of the record developed in this matter, it appears that AQM has provided a sound basis for the proposed adoption of Regulation No. 24, Section 11, and has given careful and serious consideration to the written comments provided by Safety-Kleen with respect to this issue.

## III. Order

It is hereby ordered that the proposed adoption of Regulation No. 24, Section 11, be promulgated in final form in accordance with the customary and established rule-making procedure required by law.

## IV. Reasons

The adoption of Regulation 24, Section 11, will aid the State of Delaware in attaining compliance with the ground-level ozone standard set by the Environmental Protection Agency (EPA), and will assist the Department in furtherance of the policy and purposes of 7 Del. C., Ch. 60.

Nicholas A. DiPasquale, Secretary

### ~~Section 11 – Motor Vehicle Refinishing~~

~~11/29/94~~

#### ~~e. Applicability.~~

~~1. This Section applies to any source that applies coatings in a motor vehicle refinishing operation.~~

~~2. This Section does not apply to sources applying coatings to motor vehicle parts if the parts are not a component of a vehicle or mobile equipment being coated at a motor vehicle refinishing operation.~~

~~3. This Section does not apply to any coating operation at a motor vehicle assembly plant.~~

~~4. Existing sources affected by this Section shall comply with the provisions of this Section as soon as practicable, but no later than April 1, 1996. New, modified, or reconstructed sources affected by this Section shall comply with the provisions of this Section upon startup.~~

~~5. Any facility that is currently subject to a state or federal rule promulgated pursuant to the Clean Air Act Amendments of 1977 by exceeding an applicability threshold is and shall remain subject to those provisions.~~

~~d. Definitions. As used in this Section, all terms not defined herein shall have the meaning given them in the November 15, 1990 Clean Air Act Amendments (CAAA), or in Section 2 of Regulation 24.~~

~~"Adhesion promoter" means a coating that is used to facilitate the bonding of a primer or topcoat to surfaces such as trim moldings, door locks, and door sills, where sanding is impracticable, and on plastic parts and the edges of sanded areas.~~

~~"Anti-glare/safety coating" means a coating that does not reflect light.~~

~~"Assembly-line coating operation" means any arrangement of people and machinery that applies a coating finish in a series of successive specialized operations by conveying the work along a slowly moving belt or track from person to person. This definition does not include any touch-up coating operations that occur once the equipment to be coated has left the conveyer.~~

~~"As supplied" means the condition of a coating as provided by the coating manufacturer, before it is mixed with components such as dilution solvents and reactive constituents to produce the coating, as applied.~~

~~"Basecoat/clearcoat system" (two-stage coating system) means a topcoat system composed of a pigmented basecoat portion and a transparent clearcoat portion [grams/liter (g/l), pounds/gallon (lb/gal)].~~

~~The VOC content of basecoat/clearcoat systems shall be calculated according to the following formula:~~

$$\text{VOC}_{\text{bc/cc}} = \frac{\text{---}}{\text{---}}$$

where:

$VOC_{be/ce}$  is the average VOC content as applied of the basecoat/clearcoat system.

$VOC_{be}$  is the VOC content as applied of any given basecoat.

$2VOC_{ce}$  is two times the VOC content as applied of any given clearcoat.

"Batch number" means the code number assigned to each lot of coating, as supplied.

"Catalyst" means any chemical that is added to a coating, as supplied, to speed up a chemical reaction.

"Coating category" means the class of coating as specified in paragraph (c) of this Section.

"Controlled air spray system" means a method of spraying a coating, such as a high-volume, low-pressure (HVLP) or low-volume, low-pressure (LVLP) spray system that improves the transfer efficiency while maintaining the air pressure of the spray gun between 0.1 and 10 pounds per square inch gauge (psig).

"Elastomeric material" means a coating that is specially formulated for application over flexible parts, such as elastomeric bumpers.

"Electrostatic application" means the application of charged atomized paint droplets that are deposited by electrostatic attraction.

"Fisheye remover" means a coating that is designed to mask surface depressions in a coating film.

"Group I vehicles" means passenger cars, large/heavy-duty truck cabs and chassis, light/medium-duty trucks and vans, and motorcycles.

"Group II vehicles and equipment" means public transit buses and mobile equipment.

"Hardener" means an additive that is specifically designed to promote a faster cure of an enamel finish.

"Large/heavy-duty truck" means any truck that has a manufacturer's gross vehicle weight rating of over 10,000 pounds.

"Maximum volatile organic compound content or maximum VOC content, as applied" means the highest VOC content that will be obtained when a coating, as supplied, is mixed according to any mixing instructions that have been issued by the coating manufacturer, importer, or distributor.

"Mixing instructions" means the coating manufacturer's, importer's, or distributor's specification of the quantities of dilution solvents and/or reactive components that are added to the coating, as supplied, to prepare the coating, as applied.

"Mobile equipment" means any equipment that is physically capable of being driven or drawn upon a highway including, but not limited to, the following types of equipment: construction vehicles (such as mobile cranes, bulldozers, concrete mixers); farming equipment (such as wheel tractors, plows, and pesticide sprayers); hauling equipment (such as truck trailers, utility bodies, and camper shells); and miscellaneous equipment (such as street cleaners

and golf carts).

"Motor vehicle refinishing operation" means any refinishing operations conducted on after-market automobiles, motorcycles, and light/medium-duty trucks and vans that are performed in auto body and repair shops, production paint shops, new car dealer repair and paint shops, fleet operation repair and paint shops, and in any other facility which coats vehicles under the Standard Industrial Classification (SIC) Code 7532 (Top, Body and Upholstery Repair Shops and Paint Shops), including dealer repair of vehicles damaged in transit. This definition does not include refinishing operations for other types of mobile equipment, such as farm machinery and construction equipment.

"Multi-stage coating system" means a topcoat system composed of three or more coatings including: pigmented basecoat portions, semi-transparent midcoat portions, and transparent clearcoat portions [grams/liter (g/l), pounds/gallon (lb/gal)].

The VOC content of multi-stage coating systems shall be calculated according to the following formula:

$$VOC_{ms} =$$

where:

$VOC_{ms}$  is the average VOC content as applied of the multi-stage coating system.

$VOC_{be}$  is the weighted average VOC content as applied of all basecoats.

$VOC_{me}$  is the weighted average VOC content as applied of all midcoats.

$2VOC_{ce}$  is two times the weighted average VOC content as applied of all clearcoats.

"Original equipment manufacturer or OEM" means any assembly-line manufacturer of automotive vehicles who applies coatings to the vehicles prior to their shipment from the manufacturing plant.

"Precoat" means a coating which is applied to bare metal primarily to deactivate the metal surface for corrosion resistance.

"Pretreatment wash primer" means any coating that contains a minimum of 0.5 percent acid by weight and that is applied directly to bare metal surfaces to provide corrosion resistance and to promote adhesion of subsequent coating layers.

"Primer sealer" means any coating that is applied prior to the application of a topcoat to provide corrosion resistance, topcoat adhesion, and/or color uniformity and to promote the ability of an undercoat to resist penetration by the topcoat.

"Reducer" means any solvent that is used to thin enamels.

"Refinishing" means the process of coating vehicles or

their parts and components, including partial body collision repairs, for the purpose of protection or beautification, that is subsequent to the original coating applied in a coating assembly line at the original equipment manufacturing plant.

"Refinishing coating" means a protective or decorative substance that is applied in a thin layer to the surface of passenger cars, light/medium-duty trucks, heavy-duty trucks, heavy-duty truck cabs and chassis, vans, buses, motorcycles, and mobile equipment, and is applied subsequent to coatings that are applied in a coating assembly line at the original equipment manufacturing plant.

"Specialty coating" means a coating which is necessary due to unusual and uncommon job-performance requirements. These coatings include, but are not limited to, weld-through primers, adhesion promoters, uniform-finish blenders, elastomeric materials, gloss flatteners, bright metal trim repair, anti-glare/safety coatings, rubberized asphaltic underbody coatings, impact resistant coatings and water hold-out coatings.

"Spot repair" means a repair to a motor vehicle in which the damaged area to be repaired is limited to only a portion of any given panel so that an entire panel need not be repaired.

"Spray booth" means any power-ventilated structure that is designed to accommodate refinishing operations.

"Surface preparation product" means a product that is used to remove wax, tar, grease, and silicone from a surface to be refinished.

"Thinner" means any solvent that is used to reduce the viscosity or solids content of a coating.

"Three/four stage topcoat" means a topcoat that is composed of a pigmented basecoat, a semi-transparent midcoat, and a transparent clearcoat.

"Two stage topcoat" means a topcoat that consists of a pigmented basecoat and a transparent clearcoat.

"VOC content, less water and exempt compounds" means the amount of VOCs, in grams (pounds), present in 1 liter (gallon) of coating, less the mass of any water or exempt compounds in the coating, as determined using the procedures described in paragraph (f) of this Section.

#### e. Standards:

1. Except as specified in paragraph (d) of this Section, effective on April 1, 1996, any person who applies coatings to Group I or Group II vehicles, or their parts and components, may not use a coating, as applied, that exceeds the VOC content specified in paragraph (c)(2) of this Section.

#### 2. Coating Standards

TABLE 1. MAXIMUM VOC CONTENT FOR COATINGS AS APPLIED TO GROUP I VEHICLES

Coating Category	Maximum VOC Content on April 1, 1996
Pretreatment	780 g/l (6.5 lbs/gal)
Precoat	660 g/l (5.5 lbs/gal)
Primer/Primer-Surfacer	576 g/l (4.8 lbs/gal)
Primer Sealer	552 g/l (4.6 lbs/gal)
Topcoat	600 g/l (5.0 lbs/gal)
Three/four Stage Topcoat	624 g/l (5.2 lbs/gal)
Specialty	840 g/l (7.0 lbs/gal)

g/l — grams per liter.

lbs/gal — pounds per gallon.

TABLE 2. MAXIMUM VOC CONTENT FOR COATINGS AS APPLIED TO GROUP II VEHICLES

Coating Category	Maximum VOC Content on April 1, 1996
Pretreatment	780 g/l (6.5 lbs/gal)
Precoat	660 g/l (5.5 lbs/gal)
Primer/Primer-Surfacer	336 g/l (2.8 lbs/gal)
Primer Sealer	420 g/l (3.5 lbs/gal)
Topcoat	420 g/l (3.5 lbs/gal)
Extreme Performance	744 g/l (6.2 lbs/gal)
Specialty	840 g/l (7.0 lbs/gal)

g/l — grams per liter.

lbs/gal — pounds per gallon.

3. All coating standards established in this Section apply to coatings as applied at the application equipment, after all viscosity adjustments have been made.

#### d. Alternative Controls:

1. In lieu of meeting the requirements of paragraph (e) of this Section, the owner or operator of a facility subject to any control requirements of this Section may comply with an alternative control plan that has been approved by the Department and the U.S. EPA.

2. Any owner or operator of a motor vehicle refinishing operation subject to any control requirements of this Section may comply by using a destructive device (such as an incinerator) or a recovery device that achieves an overall reduction in uncontrolled VOC emissions of at least

81 weight percent. A technical support document adequately justifying the emission capture and control techniques and complying with **Appendix "A"** and **Appendix "D"** of this regulation, shall be submitted to the Department.

**e. Compliance Certification.**

1. To establish the records required under this Section, the VOC content of each coating, as applied, may be based on the manufacturer's technical information for compliant coatings. The efficiency of each capture system and control device shall be determined by the applicable test methods and procedures specified in **Appendix "B"** and **Appendix "D"** of Regulation 24.

2. By April 1, 1996, or upon startup of a new coating operation or upon changing the method of compliance for an existing subject coating operation, the owner or operator shall certify to the Department that the coating operation is or will be in compliance with the requirements of this Section on and after April 1, 1996, or on and after the initial startup date. Such certification shall include the following information:

- i. The name and location of the facility.
- ii. The address and telephone number of the person responsible for the facility.
- iii. The identification of subject sources.
- iv. The name and identification number, including the manufacturer, of each coating as applied on each coating operation.
- v. The total volume of coatings purchased during each calendar quarter and the VOC content of each.
- vi. The time at which the facility's day begins if a time other than midnight local time is used to define a day.

f. **Test Methods.** The appropriate test methods to be used to determine VOC content of coatings are found in **Appendix "B"** in Regulation 24; the emission capture, destruction and removal efficiency, and monitoring requirements are found in **Appendix "D"** in Regulation 24.

**g. Recordkeeping and Reporting.**

1. A person who owns or operates a motor vehicle refinishing operation subject to this Section shall maintain records of the following data:

- i. The total volume of coatings purchased during each calendar quarter and the VOC content of each.
- ii. The total volume of specialty coatings purchased during each calendar quarter and the VOC content of each.

2. All records shall be maintained for at least five years and made available to the Department upon request.

3. Data collection and maintenance shall commence with the first quarter of calendar year 1996.

**Section 11 - Mobile Equipment Repair and Refinishing.**  
**[10/31/01 11/11/01]**

**a. Applicability.**

1. This Section applies to any person who applies coatings, for the purpose of protection and/or beautification, to mobile equipment or mobile equipment components in the State of Delaware, except:

- i. The surface coating process at any automobile assembly plant.
- ii. Persons who do not receive compensation for the application of the coatings.
- iii. The application of coatings sold in non-refillable aerosol cans.

2. Any person subject to the requirements of this Section shall be in compliance on or after October 31, 2003.

3. Any person who is currently subject to a state or federal rule promulgated pursuant to the Clean Air Act Amendments of 1977 by exceeding an applicability threshold is and shall remain subject to those provisions.

4. Compliance with the requirements of this section are in addition to all other state and federal requirements, to include the requirements of 40 CFR 59, Subpart B, "National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings".

**b. Definitions.** As used in this Section, all terms not defined herein shall have the meaning given them in the November 15, 1990 Clean Air Act Amendments (CAAA), or in Section 2 of Regulation 24.

"Airless Spray" means a spray coating method in which the coating is atomized by forcing it through a small nozzle at high pressure. The coating is not mixed with air before exiting from the nozzle opening.

"Electrostatic spray" means the application of charged atomized paint droplets that are deposited by electrostatic attraction.

"High Volume Low Pressure" or "HVLP" means a method of spraying a coating, that improves the transfer efficiency while maintaining the air pressure between 0.1 and 10 pounds per square inch gauge (psig).

"Mobile equipment" means any equipment that is physically capable of being driven or drawn upon a highway including, but not limited to, the following types of equipment: automobiles; trucks, truck cabs, truck bodies; buses; motorcycles; ground support vehicles, used in support of aircraft activities at airports; construction vehicles (such as mobile cranes, bulldozers, concrete mixers); farming equipment (such as wheel tractors, plows, and pesticide sprayers); hauling equipment (such as truck trailers, utility bodies, and camper shells); and miscellaneous equipment (such as street cleaners and golf carts).

**c. Standards.**

1. Any person subject to the requirements of this Section shall use only the following application techniques:

ii. Any non-atomized application technique (e.g., Flow/curtain coating, Dip coating, Roller coating, Brush coating, Cotton-tipped swab application coating, Electrodeposition coating, etc.)

ii. High Volume Low Pressure (HVLP) spraying;

iii. Electrostatic spray;

iv. Airless spray;

v. Any other coating application technique that the person has demonstrated and the Department has determined achieves emission reductions equivalent to HVLP or electrostatic spray.

2. The following are exempt from the requirements of paragraph (c)(1) of this Section:

i. The use of airbrush application methods for graphics, stenciling, lettering, and other identification markings;

ii. The applications of coatings to cover finish imperfections equal to or less than 1 inch in diameter.

3. Spray guns used to apply coatings to mobile equipment or mobile equipment components shall be cleaned by one of the following methods:

i. Use of an enclosed spray gun cleaning system that is kept closed when not in use.

ii. The unatomized discharge of solvent into a paint waste container that is kept closed when not in use.

iii. The disassembly of the spray gun and cleaning in a vat that is kept closed when not in use.

iv. The atomized spray into a paint waste container that is fitted with a device designed to capture atomized solvent emissions.

4. Any person subject to the provisions of this Section shall implement the following housekeeping and pollution prevention measures:

i. Fresh and used coatings, solvent, and cleaning solvents shall be stored in non-absorbent, non-leaking containers. The containers shall be kept closed at all times except when filling or emptying.

ii. Cloth and paper, or other absorbent applicators, moistened with coatings, solvents, or cleaning solvents shall be stored in closed, non-absorbent, non-leaking containers.

iii. Handling and transfer procedures shall minimize spills during the transfer of coatings, solvents, and cleaning solvents.

5. Any person subject to the requirements of this Section shall be trained in the proper use and handling of coatings, solvents and waste products in order to minimize the emission of air contaminants.

i. Proof of training for any person subject to the requirements of this Section shall be maintained on the facility premises.

ii. Acceptable forms of training include equipment or paint manufacturer's seminars, classes,

workshops, or any other training approved by the Department.

## **DIVISION OF AIR & WASTE MANAGEMENT**

Statutory Authority: 7 Delaware Code,  
Chapters 60, (7 Del.C. Ch. 60)

**Secretary's Order No.: 2001-A-003**

**RE: Proposal to Amend Regulation 24  
(Control of Volatile Organic Compound Emissions),  
– Section 33: Solvent Cleaning and Drying -**

**Date of Issuance: September 21, 2001**

**Effective Date of the Amendment: November 11, 2001**

### **I. Background**

On Tuesday, August 28, 2001, a public hearing was held in the DNREC Auditorium in Dover to receive comment on proposed amendments to Regulation 24 of the Regulations Governing the Control of Air Pollution with regard to the control of volatile organic compound emissions (VOCs). This amendment to Section 33 is being proposed in an attempt to achieve reduction of VOCs needed to obtain final EPA approval of the Department's 1-hour ozone attainment demonstration. The amendment defines applicability, compliance, notification, monitoring, recordkeeping, and reporting requirements similar to the Ozone Transport Commission model rule approved this spring for adoption, as needed, by member States. Public workshops were conducted on June 25, 27, and 28, 2001, in Dover, Georgetown, and New Castle, respectively. No negative comments were received on the Department's planned action during the public hearing, nor were any received throughout the comment period, which ended on August 31, 2001. Written comments were received from John W. Whitby, Jr., Environmental Chairman of the Delaware Automobile and Truck Dealers Association, as well as from David A. Wagner, Senior Environmental Manager of Safety-Kleen. AQM responded to these comments, both verbally at the public hearing, as well as in a separate memorandum to the Hearing Officer, dated September 4, 2001. Proper notice of the hearing was provided as required by law.

After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared his report and recommendation in the form of a Hearing Officer's Report to the Secretary dated September 19, 2001, and that memorandum is expressly incorporated herein by reference.

## II. Findings and Conclusions

On the basis of the record developed in this matter, it appears that AQM has provided a sound basis for the proposed amendments to Regulation No. 24, Section 33, including reasoned responses to the various comments made to the Department with respect to this proposed amendment.

## III. Order

It is hereby ordered that the proposed amendments to Regulation No. 24, Section 33, be promulgated in final form in accordance with the customary statutory procedure.

## IV. Reasons

The amendment of Regulation 24, Section 33, will aid the State of Delaware in attaining compliance with the 1-hour ground-level ozone standard set by the Environmental Protection Agency (EPA), and will assist the Department in furtherance of the policy and purposes of 7 Del. C., Ch. 60.

Nicholas A. DiPasquale, Secretary

### **Section 33—Solvent Metal Cleaning, 1/11/93**

a. Applicability. This Section applies to all solvent metal cleaning sources with the following exemptions:

1. Any open-top vapor degreasing operation with an open area smaller than 1 square meter ( $m^2$ ) (10.8 square feet [ $ft^2$ ]) is exempt from paragraphs (c)(2)(iii)(B) and (c)(2)(iii)(D) of this Section.

2. Any conveyORIZED degreaser with an air/solvent interface smaller than  $2.0 m^2$  (21.5  $ft^2$ ) is exempt from paragraph (c)(3)(ii) of this Section.

b. Definitions. As used in this Section, all terms not defined herein shall have the meaning given them in the November 15, 1990 Clean Air Act Amendments, or in Section 2 of this regulation.

"Air/solvent interface" means the surface area defined by points of contact between the solvent liquid or vapor in the cleaner/degreaser and the surrounding air.

"Cold cleaning" means the batch process of cleaning and removing soils from a metal surface by spraying, brushing, flushing, or immersion while maintaining the solvent below its boiling point. Wipe cleaning is not included in this definition.

"Conveyorized degreasing" means the process of cleaning and removing soils from a continuous stream of metal parts using either cold or vaporized solvents.

"Freeboard height" means, for a cold cleaner, the distance from the liquid solvent level in the degreaser tank to

the lip of the tank. For an open-top vapor degreaser, it is the distance from the vapor level in the tank during idling to the lip of the tank. For a vapor-conveyorized degreaser, it is the distance from the vapor level to the bottom of the entrance or exit opening, whichever is lower. For a cold-conveyorized degreaser, it is the distance from the liquid solvent level to the bottom of the entrance or exit opening, whichever is lower.

"Freeboard ratio" means the freeboard height divided by the smaller interior dimension (length, width, or diameter) of the degreaser tank.

"Open-top vapor degreasing" means the process using condensation of hot solvent vapor to clean and remove soils from a batch of metal parts.

"Refrigerated chiller" means a device mounted above both the water jacket and the primary condenser coils which carries a refrigerant that provides a chilled air blanket above the solvent vapor, thereby reducing emissions from the degreaser bath.

"Solvent metal cleaning" means the process of cleaning soils from metal surfaces by cold cleaning, open-top vapor degreasing, or conveyorized degreasing.

e. Standards:

1. Cold cleaning facilities. The owner or operator of a cold cleaning facility shall:

i. Equip the cleaner with a cover that is easily operated with one hand, if any one of the following:

A. The solvent true vapor pressure is greater than 2 kiloPascals (kPa) (15 millimeters of Mercury [mm Hg] or 0.3 pound per square inch [psi]) measured at  $38^{\circ}C$  ( $100^{\circ}F$ ) by ASTM D323-89.

B. The solvent is agitated.

C. The solvent is heated.

ii. Equip the cleaner with an internal drainage facility so that parts are enclosed under the cover while draining if the solvent true vapor pressure is greater than 4.3 kPa (32 mm Hg or 0.6 psi) measured at  $38^{\circ}C$  ( $100^{\circ}F$ ) by ASTM D323-89, except that the drainage facility may be external for applications where an internal type cannot fit into the cleaning system.

iii. Implement one of the following control measures if the solvent true vapor pressure is greater than 4.3 kPa (32 mm Hg or 0.6 psi) measured at  $38^{\circ}C$  ( $100^{\circ}F$ ) by ASTM D323-89, or if the solvent is heated above  $50^{\circ}C$  ( $120^{\circ}F$ ):

A. Freeboard that gives a freeboard ratio greater than or equal to 0.7.

B. Water cover at least 2.54 cm (1 in.) deep (solvent shall be insoluble in and heavier than water).

C. Another system of equivalent control, such as a refrigerated chiller or a carbon adsorber, approved by

the Administrator of the U.S. EPA as part of a State Implementation Plan (SIP) or Federal Implementation Plan (FIP) revision.

- iv. Provide a permanent, legible, conspicuous label, summarizing the operating requirements.
- v. Store waste solvent in covered containers.
- vi. Close the cover whenever parts are not being handled in the cleaner.
- vii. Drain the cleaned parts until dripping ceases.
- viii. If used, supply a solvent spray that is a solid fluid stream (not a fine, atomized, or shower-type spray) at a pressure that does not exceed 10 pounds per square inch gauge (psig).
- ix. Degrease only materials that are neither porous nor absorbent.

2. Open top vapor degreasers. Except as provided under paragraph (a)(i) of this Section, the owner or operator of an open top vapor degreaser shall:

- i. Equip the vapor degreaser with a cover that can be opened and closed easily without disturbing the vapor zone.
- ii. Provide the following safety switches:
  - A. A vapor level thermostat that shuts off the sump heat if the condenser coolant is either not circulating or too warm.
  - B. A spray safety switch that shuts off the spray pump if the vapor level drops more than 10 centimeters (cm) (4 inches [in.]).
- iii. Implement one of the following control measures:
  - A. Freeboard ratio greater than or equal to 0.75 and, if the degreaser opening is greater than 1 m<sup>2</sup> (10.8 ft<sup>2</sup>), a powered cover.
  - B. Refrigerated chiller.
  - C. Enclosed design (cover or door opens only when the dry part is actually entering or exiting the degreaser).
  - D. Carbon adsorption system, with ventilation greater than or equal to 15 cubic meters per minute per square meter (m<sup>3</sup>/min/m<sup>2</sup>) (50 cubic feet per minute per square foot [ft<sup>3</sup>/min/ft<sup>2</sup>]) of air/solvent interface (when cover is open), and exhausting less than 25 parts per million (ppm) of solvent averaged over one complete adsorption cycle, or 24 hours, whichever is less.
  - E. A control system, demonstrated to have a control efficiency equivalent to or greater than any of the above and approved by the Administrator of the U.S. EPA as part of a SIP or FIP revision.

iv. Keep the cover closed at all times except when processing work loads through the degreaser.

v. Minimize solvent carryout by:

- A. Racking parts so that solvent drains freely and is trapped.

B. Moving parts in and out of the degreaser at less than 3.3 meters per minute (m/min) (11 feet per minute [ft/min]).

C. Holding the parts in the vapor zone at least 30 seconds or until condensation ceases, whichever is longer.

D. Tipping out any pools of solvent on the cleaned parts before removal from the vapor zone.

E. Allowing parts to dry within the degreaser for at least 15 seconds or until visually dry, whichever is longer.

- vi. Degrease only materials that are neither porous nor absorbent.
- vii. Occupy no more than one-half of the degreaser's open-top area with a workload.
- viii. Always spray within the vapor level.
- ix. Repair solvent leaks immediately, or shut down the degreaser.
- x. Store waste solvent only in covered containers.
- xi. Operate the cleaner such that water cannot be visually detected in solvent exiting the water separator.
- xii. Use no ventilation fans near the degreaser opening.

xiii. When the cover is open, not expose the open-top vapor degreaser to drafts greater than 40 m/min (131 ft/min), as measured between 1 and 2 m upwind and at the same elevation as the tank lip.

xiv. If a lip exhaust is used on the open top vapor degreaser, not use a ventilation rate that exceeds 20 m<sup>3</sup>/min/m<sup>2</sup> (65 ft<sup>3</sup>/min/ft<sup>2</sup>) of degreaser open area, unless a higher rate is necessary to meet OSHA requirements.

xv. Provide a permanent, conspicuous label, summarizing the operating procedures of paragraphs (e)(2)(iv) through (e)(2)(xiv) of this Section.

3. Conveyorized degreasers. Except as provided under paragraph (a)(3) of this Section, the owner or operator of a conveyorized degreaser shall:

i. Use no workplace fans near the degreaser opening, and ensure that exhaust ventilation does not exceed 20 m<sup>3</sup>/min/m<sup>2</sup> (65 ft<sup>3</sup>/min/ft<sup>2</sup>) of degreaser opening, unless a higher rate is necessary to meet OSHA requirements.

ii. Install one of the following control devices:

- A. Refrigerated chiller.
- B. Carbon adsorption system, with ventilation greater than or equal to 15 m<sup>3</sup>/min/m<sup>2</sup> (50 ft<sup>3</sup>/min/ft<sup>2</sup>) of air/solvent interface (when downtime covers are open), and exhausting less than 25 ppm of solvent by volume averaged over one complete adsorption cycle, or 24 hours, whichever is less.

C. A system demonstrated to have a control efficiency equivalent to or greater than the devices listed in paragraph (e)(3)(ii)(A) or (e)(3)(ii)(B) of this Section and approved by the Administrator of the U.S. EPA as part of a

SIP or FIP revision.

iii. Equip the cleaner with equipment, such as a drying tunnel or rotating (tumbling) basket, sufficient to prevent cleaned parts from carrying out solvent liquid or vapor.

iv. Provide the following safety switches:

A. A condenser flow switch and thermostat that shut off the sump heat if the condenser coolant is either not circulating or too warm.

B. A spray safety switch which shuts off the spray pump or the conveyor if the vapor level drops more than 10 cm (4 in.).

C. A vapor level control thermostat that shuts off the pump heat when the vapor level rises too high.

v. Minimize openings during operation so that entrances and exits silhouette workloads with an average clearance between the parts and the edge of the degreaser opening of less than 10 cm (4 in.) or less than 10 percent of the width of the opening.

vi. Provide downtime covers for closing off the entrance and exit during shutdown hours.

vii. Minimize carryout emissions by:

A. Racking parts so that solvent drains freely from parts and is not trapped.

B. Maintaining the vertical conveyor speed at less than 3.3 m/min (11 ft/min).

viii. Store waste solvent only in covered containers.

ix. Repair solvent leaks immediately, or shut down the degreaser.

x. Operate the cleaner such that water cannot be visually detected in solvent exiting the water separator.

xi. Place downtime covers over entrances and exits of the conveyorized degreaser at all times when the conveyors and exhausts are not being operated.

xii. Degrease only materials that are neither porous nor absorbent.

d. Test methods. Compliance with paragraphs (e)(1)(i) through (iii), (e)(2)(iii)(D), (e)(2)(xii) through (xiv), (e)(3)(i), and (e)(3)(ii)(B) of this Section shall be determined by applying the following test methods, which are found at 40-CFR, Part 60, Appendix A (July 1, 1992), or the American Society for Testing and Materials (ASTM) methods, as appropriate:

1. Methods 1-4 for determining flow rates.

2. Method 18 for determining gaseous organic compound emissions by gas chromatography.

3. Method 25 for determining total gaseous nonmethane organic emissions as carbon except in cases where the outlet VOC concentration of the control device is less than 50 ppm as carbon, in which case Method 25A shall be used.

4. Method 25A or 25B for determining total gaseous organic concentrations using flame ionization or

nondispersive infrared analysis.

5. ASTM D323-89 for measuring solvent true vapor pressure.

e. Recordkeeping. Each owner or operator of a solvent metal cleaning source subject to this Section shall maintain the following records in a readily accessible location for at least 5 years and shall make these records available to the Department upon verbal or written request:

1. A record of central equipment maintenance, such as replacement of the carbon in a carbon adsorption unit.

2. The results of all tests conducted in accordance with the requirements in paragraph (d) of this Section.

f. Reporting. The owner or operator of any facility containing sources subject to this Section shall:

1. Comply with the initial compliance certification requirements of Section 5(a) of this regulation.

2. Comply with the requirements of Section 5(b) of this regulation regarding reports of excess emissions, as well as complying with other State of Delaware exceedance reporting requirements.

3. Comply with the requirements of Section 5(e) of this regulation for excess emissions related to any control devices used to comply with paragraphs (e)(1)(iii)(C), (e)(2)(iii)(D) or (E), and (e)(3)(ii)(B) or (C) of this Section. This requirement is in addition to any other State of Delaware exceedance reporting requirement.

### **Section 33 - Solvent Cleaning and Drying**

#### **11/11/01**

a. Applicability.

1. This Section applies to any person who owns or operates a solvent cleaning machine that meets the criteria of paragraphs a.1.i. and a.1.ii.

i. Contains more than 1 liter of solvent.

ii. Uses any solvent containing volatile organic compounds in a total concentration greater than 5 percent by weight, as a cleaning and/or drying agent.

2. Except as provided in paragraphs c.4 through c.6 of this Section, existing sources affected by this Section shall comply with the provisions of this Section [as soon as practicable, but] no later than [October November] 11, 2001 [2]. New, modified, or reconstructed sources affected by this Section shall comply with the provisions of this Section upon start-up.

3. Any person subject to both this Section and Regulation 30 of the State of Delaware "Regulations Governing the Control of Air Pollution" shall submit to the Department a request to amend the existing Title V permit, consistent with the permitting requirements of Regulation 30. Any person subject to paragraph c. of this Section, but not subject to Regulation 30, shall request to be covered

under a source category permit, consistent with Regulation 2 of the State of Delaware "Regulations Governing the Control of Air Pollution" within 90 days of the Department's establishment of a source category permit covering solvent cleaning and drying. Any person subject to paragraphs d. through g. of this Section, but not subject to Regulation 30, shall submit to the Department a request to amend the existing Regulation 2 permit, consistent with the permitting requirements of Regulation 2.

b. Definitions. As used in this Section, all terms not defined herein shall have the meaning given them in the November 15, 1990 Clean Air Act Amendments, in Regulation 1, or in Section 2 of this regulation.

"Airless cleaning system" means a solvent cleaning machine that is automatically operated and seals at a differential pressure of 0.50 pounds per square inch gauge (psig) or less, prior to the introduction of solvent or solvent vapor into the cleaning chamber and maintains differential pressure under vacuum during all cleaning and drying cycles.

"Airtight cleaning system" means a solvent cleaning machine that is automatically operated and seals at a differential pressure of 0.50 pounds per square inch gauge (psig) or less, prior to the introduction of solvent or solvent vapor into the cleaning chamber and during all cleaning and drying cycles.

"Automated parts handling system" means a mechanical device that carries all parts and parts baskets at a controlled speed from the initial loading of soiled or wet parts through the removal of the cleaned or dried parts. Automated parts handling systems include, but are not limited to, hoists and conveyors.

"Batch vapor cleaning machine" means a vapor solvent cleaning machine in which individual parts or a set of parts move through the entire cleaning or drying cycle before new parts are introduced into the cleaning machine. The term does not include machines that do not have a solvent/air interface, such as airless and airtight cleaning systems.

"Carbon adsorber" means a bed of activated carbon into which an air/solvent gas-vapor stream is routed and which adsorbs the solvent on the carbon.

"Cold cleaning machine" means a solvent cleaning machine that contains and/or uses unheated liquid solvent into which parts are placed to remove soils from the surfaces of the parts or to dry the parts. The term does not include machines that do not have a solvent/air interface, such as airless and airtight cleaning systems.

"Downtime mode" means the time period when a solvent cleaning machine is not cleaning or drying parts and the sump heating coils, if present, are turned off.

"Dwell" means the technique of holding parts within the freeboard area but above the vapor zone of a solvent cleaning machine. Dwell occurs after cleaning or drying to

allow solvent to drain from the parts or parts baskets back into the solvent cleaning machine.

"Dwell time" means the period of time between when parts or a parts basket is placed in the vapor zone of a batch vapor or in-line vapor cleaning machine and when solvent dripping ceases.

"Freeboard height" means, for a batch cold cleaning machine, the distance from the liquid solvent level to the top of the solvent cleaning machine. For a batch vapor cleaning machine, it is the distance from the solvent/air interface to the top of the solvent cleaning machine, as measured during idling mode. For an in-line cleaning machine, it is the distance from the solvent/air interface to the bottom of the entrance or exit opening, whichever is lower, as measured during idling mode.

"Freeboard ratio" means the ratio of the solvent cleaning machine freeboard height to the smaller interior dimension (length, width, or diameter) of the solvent cleaning machine.

"Freeboard refrigeration device" means a set of secondary coils mounted in the freeboard area that carries a refrigerant or other chilled substance to provide a chilled air blanket above the solvent vapor. A primary condenser that is capable of maintaining a temperature, in °F, in the center of the chilled air blanket at not more than 30 percent of the solvent's boiling point is both a primary condenser and a freeboard refrigeration device.

"Idling mode" means the time period when a solvent cleaning machine is not actively cleaning or drying parts and the sump heating coils, if present, are turned on.

"Immersion cold cleaning machine" means a cold solvent cleaning machine in which the parts are immersed in the solvent when being cleaned or dried. A remote reservoir cold cleaning machine that is also an immersion cold cleaning machine is considered an immersion cold cleaning machine for purposes of this Section.

"In-line vapor cleaning machine" means a vapor solvent cleaning machine that uses an automated parts handling system, typically a conveyor, to automatically provide a continuous supply of parts to be cleaned or dried. These units are fully enclosed except for the conveyor inlet and exit portals.

"Primary condenser" means a series of circumferential cooling coils on a vapor cleaning machine through which a chilled substance is circulated or recirculated to provide continuous condensation of rising solvent vapors and, thereby, creating a concentrated solvent vapor zone.

"Reduced room draft" means decreasing the flow or movement of air across the top of the freeboard area of a solvent cleaning machine to less than 15.2 meters per minute (50 feet per minute) by methods including, but not limited to, redirecting fans and/or air vents to not blow across the cleaning machine, moving the cleaning machine to a corner

where there is less room draft, and constructing a partial or complete enclosure around the cleaning machine.

“Remote reservoir cold cleaning machine” means a solvent cleaning machine in which liquid solvent is pumped to a sink-like work area that immediately drains solvent back into an enclosed container while parts are being cleaned or dried, allowing no solvent to pool in the work area.

“Soils” means contaminants that are removed from the parts being cleaned. Soils include, but are not limited to, grease, oils, waxes, metal chips, carbon deposits, fluxes, and tars.

“Solvent/air interface” means, for a vapor cleaning machine, the location of contact between the concentrated solvent vapor layer and the air. This location of contact is defined as the mid-line height of the primary condenser coils. For a cold cleaning machine, it is the location of contact between the liquid solvent and the air.

“Solvent cleaning machine” means any device or piece of equipment that uses volatile organic compounds, liquid or vapor, to remove soils from parts or to dry parts. Types of solvent cleaning machines include, but are not limited to, batch vapor, in-line vapor, in-line cold, immersion cold, and remote reservoir cold cleaning machines, as well as, airless cleaning and airtight cleaning systems.

“Superheated vapor system” means a system that heats the solvent vapor, either passively or actively, to a temperature 10°F above the solvent’s boiling point. Parts are held in the superheated vapor before exiting the machine to evaporate the liquid solvent on the parts. Hot vapor recycle is an example of a superheated vapor system.

“Vapor cleaning machine” means a batch or in-line solvent cleaning machine that heats liquid solvent that is used as part of the cleaning or drying cycle. The heated solvent may or may not be boiling. The term does not include machines that do not have a solvent/air interface, such as airless and airtight cleaning systems.

“Vapor up control switch” means a thermostatically controlled switch that shuts off or prevents solvent from being sprayed when there is no vapor. On in-line vapor cleaning machines the switch also prevents the conveyor from operating when there is no vapor.

“Working mode” means the time period when the solvent cleaning machine is actively cleaning or drying parts.

“Working mode cover” means any cover or solvent cleaning machine design that allows the cover to shield the cleaning machine openings from outside air disturbances while parts are being cleaned or dried in the cleaning machine. A cover that is used during the working mode is opened only during parts entry and removal.

c. Standards for batch cold cleaning machines. This paragraph applies to all batch cold cleaning machines. The

provisions of this paragraph shall not apply if the owner or operator of the cold cleaning machine demonstrates and the Department approves in writing that compliance with the paragraph will result in unsafe operating conditions.

1. Immersion cold cleaning machines shall have a freeboard ratio of 0.75 or greater unless the machines are equipped with working mode covers that shall be closed except when parts are being placed into or being removed from the machine. Covers shall be free of cracks, holes, and other defects, and easily opened or closed.

2. Immersion cold cleaning machines and remote reservoir cold cleaning machines shall:

i. Have a permanent, conspicuous label summarizing the operating requirements in paragraph c.3. of this Section.

ii. Be equipped with a downtime mode cover that shall be closed at all times except during cleaning or drying of parts or the addition or removal of solvent. Cover shall be free of cracks, holes, and other defects, and readily opened or closed.

3. Cold cleaning machines shall be operated in accordance with the following procedures:

i. Waste solvent, still bottoms, and sump bottoms shall be collected and stored in closed containers. The closed containers may contain a device that allows pressure relief, but does not allow liquid solvent to drain from the container.

ii. Cleaned parts shall be drained at least 15 seconds or until dripping ceases, whichever is longer. Parts having cavities or blind holes shall be tipped or rotated while the part is draining. During the draining, tipping or rotating, the parts shall be positioned so that solvent drains directly back to the cleaning machine.

iii. Flushing of parts using a flexible hose or other flushing device shall be performed only within the freeboard area of the cold cleaning machine. The solvent flushing shall be a solid fluid stream, not an atomized or shower spray, at a pressure that does not exceed 10 pounds per square inch gauge (psig).

iv. Work area fans shall be located and positioned so that they do not blow across the opening of the cold cleaning machine.

v. Sponges, fabric, wood, leather, paper products, and other absorbent materials shall not be cleaned or dried in the cold cleaning machine.

vi. Any solvent bath agitator shall be operated to produce a rolling motion of the solvent with no observable splashing of the solvent against the tank walls or the parts being cleaned. Air agitated solvent baths may not be used.

vii. Spills during solvent transfer and use of the cold cleaning machine shall be cleaned up immediately, and the wipe rags or other absorbent material shall be immediately stored in covered containers for disposal or recycling.

viii. The owner or operator shall ensure that the solvent level does not exceed the fill line.

4. On and after [~~October~~ November] 11, 2002, no person shall use, sell, or offer for sale for use in a cold cleaning machine any solvent with a vapor pressure of 1.0 millimeters of mercury (mm Hg) or greater, measured at 20°C (68°F) that contains volatile organic compounds.

5. On and after [~~October~~ November] 11, 2002, a person who sells or offers for sale any solvent containing volatile organic compounds for use in a cold cleaning machine shall provide, to the purchaser, the following written information:

- i. The name and address of the solvent supplier.
- ii. The type of solvent including the product or vendor identification number.
- iii. The vapor pressure of the solvent measured in mm Hg at 20°C (68°F).

6. The owner or operator of a cold cleaning machine shall maintain for not less than five years, and shall provide to the Department, on request, the information specified in paragraph c.5. An invoice, bill of sale, certificate that corresponds to a number of sales, Material Safety Data Sheet (MSDS), or other appropriate documentation acceptable to the Department may be used to comply with this Section.

d. Standards for batch vapor cleaning machines. This paragraph applies to batch vapor cleaning machines.

1. Batch vapor cleaning machines shall be equipped with:

i. Either a fully enclosed design or idling and downtime mode covers that completely covers the cleaning machine openings when in place. Covers shall be free of cracks, holes, and other defects, and readily opened or closed without disturbing the vapor zone. If the solvent cleaning machine opening is greater than 10 square feet, the covers must be powered. If a lip exhaust is used, the closed covers shall be below the level of the lip exhaust.

ii. A freeboard ratio of 0.75 or greater.

iii. A primary condenser.

iv. A vapor up control switch.

v. A device that shuts off the sump heat if the sump liquid solvent level drops to the sump heater coils.

vi. A vapor level control device that shuts off the sump heat if the vapor level in the vapor cleaning machine rises above the height of the primary condenser.

vii. An automated parts handling system that moves parts or parts baskets at a speed of 3.4 meters per minute (11 feet per minute) or less when the parts are entering or exiting the vapor zone. If the parts or parts basket being cleaned or dried occupy more than 50% of the solvent/air interface area, the automated parts handling system shall move parts or parts baskets at a speed of 0.93 meters per minute (3 feet per minute) or less.

viii. Each vapor cleaning machine that uses a lip exhaust shall be designed and operated to route all collected solvent vapors through a properly operated and maintained carbon adsorber. The concentration of organic solvent in the exhaust shall not exceed 25 parts per million, averaged over one complete adsorption cycle or 24 hours, whichever is less.

ix. A permanent, conspicuous label summarizing the operating requirements in paragraph d.4. of this Section.

2. In addition to the requirements of paragraph d.1. of this Section, the owner or operator of a batch vapor cleaning machine with a solvent/air interface area of 13 square feet or less shall implement one of the following control options:

i. A working mode cover, a freeboard ratio of 1.0, and superheated vapor.

ii. Superheated vapor and a freeboard refrigeration device operated to ensure that the chilled air blanket temperature is no greater than 30 percent of the solvent's boiling point.

iii. A working mode cover and a freeboard refrigeration device operated to ensure that the chilled air blanket temperature, in °F, is no greater than 30 percent of the solvent's boiling point.

iv. Reduced room draft, a freeboard ratio of 1.0, and superheated vapor.

v. Reduced room draft and a freeboard refrigeration device operated to ensure that the chilled air blanket temperature, in °F, is no greater than 30 percent of the solvent's boiling point.

vi. A freeboard ratio of 1.0 and a freeboard refrigeration device operated to ensure that the chilled air blanket temperature, in °F, is no greater than 30 percent of the solvent's boiling point.

vii. Dwell and a freeboard refrigeration device operated to ensure that the chilled air blanket temperature, in °F, is no greater than 30 percent of the solvent's boiling point. Dwell shall be not less than 35 percent of the dwell time determined for the part or parts basket.

viii. Reduced room draft, a freeboard ratio of 1.0, and dwell. Dwell shall be not less than 35 percent of the dwell time determined for the part or parts basket.

ix. A freeboard refrigeration device operated to ensure that the chilled air blanket temperature, in °F, is no greater than 30 percent of the solvent's boiling point and a carbon adsorber that reduces solvent emissions in the exhaust to a level not to exceed 25 parts per million, averaged over one complete adsorption cycle or 24 hours, whichever is less.

x. A freeboard ratio of 1.0, superheated vapor, and a carbon adsorber that reduces solvent emissions in the exhaust to a level not to exceed 25 parts per million, averaged over one complete adsorption cycle or 24 hours, whichever is less.

3. In addition to the requirements of paragraph d.1. of this Section, the owner or operator of a batch vapor cleaning machine with a solvent/air interface area of greater than 13 square feet shall implement one of the following control options:

i. A freeboard refrigeration device operated to ensure that the chilled air blanket temperature, in °F, is no greater than 30 percent of the solvent's boiling point, a freeboard ratio of 1.0, and superheated vapor.

ii. Dwell, a freeboard refrigeration device operated to ensure that the chilled air blanket temperature, in °F, is no greater than 30 percent of the solvent's boiling point, and reduced room draft. Dwell shall be not less than 35 percent of the dwell time determined for the part or parts basket.

iii. A working mode cover, a freeboard refrigeration device operated to ensure that the chilled air blanket temperature, in °F, is no greater than 30 percent of the solvent's boiling point, and superheated vapor.

iv. Reduced room draft, freeboard ratio of 1.0, and superheated vapor.

v. A freeboard refrigeration device operated to ensure that the chilled air blanket temperature, in °F, is no greater than 30 percent of the solvent's boiling point, reduced room draft, and superheated vapor.

vi. A freeboard refrigeration device operated to ensure that the chilled air blanket temperature, in °F, is no greater than 30 percent of the solvent's boiling point, a freeboard ratio of 1.0, and reduced room draft.

vii. A freeboard refrigeration device operated to ensure that the chilled air blanket temperature is no greater than 30 percent of the solvent's boiling point, superheated vapor, and a carbon adsorber that reduces solvent emissions in the exhaust to a level not to exceed 25 parts per million, averaged over one complete adsorption cycle or 24 hours, whichever is less.

4. Batch vapor cleaning machines shall be operated in accordance with the following procedures:

i. Waste solvent, still bottoms, and sump bottoms shall be collected and stored in closed containers. The closed containers may contain a device that allows pressure relief, but does not allow liquid solvent to drain from the container.

ii. Cleaned parts shall be drained at least 15 seconds or until dripping ceases, whichever is longer. Parts having cavities or blind holes shall be tipped or rotated while the part is draining. During the draining, tipping or rotating, the parts shall be positioned so that solvent drains directly back to the batch vapor cleaning machine. A superheated vapor system shall be an acceptable alternate technology.

iii. Parts or parts baskets shall not be removed from the batch vapor cleaning machine until dripping has ceased.

iv. Flushing of parts using a flexible hose or other flushing device shall be performed within the vapor zone of the batch vapor cleaning machine or within a section of the machine that is not exposed to the ambient air. The solvent flushing shall be a solid fluid stream, not an atomized or shower spray.

v. When the cover is open, the batch vapor cleaning machine shall not be exposed to drafts greater than 40 meters per minute (132 feet per minute), as measured between 1 and 2 meters (3.3 and 6.6 feet) upwind and at the same elevation as the tank lip.

vi. Sponges, fabric, wood, leather, paper products, and other absorbent materials shall not be cleaned or dried in the batch vapor cleaning machine.

vii. Spills during solvent transfer and use of the batch vapor cleaning machine shall be cleaned up immediately, and the wipe rags or other absorbent material shall be immediately stored in covered containers for disposal or recycling.

viii. Work area fans shall be located and positioned so that they do not blow across the opening of the batch vapor cleaning machine.

ix. During startup of each batch vapor cleaning machine, the primary condenser shall be turned on before the sump heater.

x. During shutdown of each batch vapor cleaning machine, the sump heater shall be turned off and the solvent vapor layer allowed to collapse before the primary condenser is turned off.

xi. When solvent is added to or drained from the batch vapor cleaning machine, the solvent shall be transferred using threaded or other leakproof couplings, and the discharge end of the pipe shall be located beneath the liquid solvent surface.

xii. The idling and downtime mode covers shall be closed at all times during idling and downtimes except during maintenance of the machine when the solvent has been removed and during addition of solvent to the machine.

xiii. If a lip exhaust is used on the open top batch vapor cleaning machine, the ventilation rate shall not exceed  $20 \text{ m}^3/\text{min}/\text{m}^2$  ( $65 \text{ ft}^3/\text{min}/\text{ft}^2$ ) of batch vapor cleaning machine open area, unless a higher rate is necessary to meet OSHA requirements.

e. Standards for in-line cleaning machines. This paragraph applies to in-line cold and vapor cleaning machines.

1. In-line cleaning machines shall be equipped with:

i. Either a fully enclosed design or idling and downtime mode covers that completely covers the in-line cleaning machine openings when in place. Covers shall be free of cracks, holes, and other defects, and readily opened or closed without disturbing the vapor zone.

- ii. A freeboard ratio of 0.75 or greater.
- iii. A primary condenser.
- iv. A vapor up control switch.
- v. A device that shuts off the sump heat if the sump liquid solvent level drops to the sump heater coils.
- vi. A vapor level control device that shuts off the sump heat if the vapor level in the in-line cleaning machine rises above the height of the primary condenser.
- vii. An automated parts handling system that moves parts or parts baskets at a speed of 3.4 meters per minute (11 feet per minute) or less when the parts are entering or exiting the vapor zone. If the parts or parts basket being cleaned or dried occupy more than 50% of the solvent/air interface area, the automated parts handling system shall move parts or parts baskets at a speed of 0.93 meters per minute (3 feet per minute) or less.

viii. Each in-line machine that uses a lip exhaust shall be designed and operated to route all collected solvent vapors through a properly operated and maintained carbon adsorber. The concentration of organic solvent in the exhaust shall not exceed 25 parts per million, averaged over one complete adsorption cycle or 24 hours, whichever is less.

ix. A permanent, conspicuous label summarizing the operating requirements in paragraph e.3.

2. In addition to the requirements of paragraph e.1. of this Section, the owner or operator of an in-line cleaning machine shall implement one of the following control options:

- i. A freeboard ratio of 1.0 and superheated vapor.
- ii. A freeboard ratio of 1.0 and a freeboard refrigeration device operated to ensure that the chilled air blanket temperature, in °F, is no greater than 30 percent of the solvent's boiling point.

iii. Dwell and a freeboard refrigeration device operated to ensure that the chilled air blanket temperature, in °F, is no greater than 30 percent of the solvent's boiling point. Dwell shall be not less than 35 percent of the dwell time determined for the part or parts basket.

iv. Dwell and a carbon adsorber that reduces solvent emissions in the exhaust to a level not to exceed 25 parts per million, averaged over one complete adsorption cycle or 24 hours, whichever is less. Dwell shall be not less than 35 percent of the dwell time determined for the part or parts basket.

3. In-line cleaning machines shall be operated in accordance with the following procedures:

- i. Waste solvent, still bottoms, and sump bottoms shall be collected and stored in closed containers. The closed containers may contain a device that allows pressure relief, but does not allow liquid solvent to drain from the container.
- ii. Parts shall be oriented so that the solvent drains

freely from the parts. Cleaned parts shall be drained at least 15 seconds or until dripping ceases, whichever is longer. Parts having cavities or blind holes shall be tipped or rotated while the part is draining. During the draining, tipping or rotating, the parts shall be positioned so that solvent drains directly within the in-line cleaning machine.

iii. Parts or parts baskets shall not be removed from the in-line cleaning machine until dripping has ceased.

iv. Flushing of parts using a flexible hose or other flushing device shall be performed within the vapor zone of the in-line cleaning machine or within a section of the machine that is not exposed to the ambient air. The solvent flushing shall be a solid fluid stream, not an atomized or shower spray.

v. When the in-line cleaning machine is operating, the entrance and exit portals shall not be exposed to drafts greater than 40 meters per minute (132 feet per minute), as measured between 1 and 2 meters (3.3 and 6.6 feet) upwind and at the same elevation as the portals.

vi. Sponges, fabric, wood, leather, paper products, and other absorbent materials shall not be cleaned or dried in the in-line cleaning machine.

vii. Spills during solvent transfer and use of the in-line cleaning machine shall be cleaned up immediately, and the wipe rags or other absorbent material shall be immediately stored in covered containers for disposal or recycling.

viii. Work area fans shall be located and positioned so that they do not blow across the openings of the in-line cleaning machine.

ix. During startup of each in-line cleaning machine, the primary condenser shall be turned on before the sump heater.

x. During shutdown of each in-line cleaning machine, the sump heater shall be turned off and the solvent vapor layer allowed to collapse before the primary condenser is turned off.

xi. When solvent is added to or drained from the in-line cleaning machine, the solvent shall be transferred using threaded or other leakproof couplings and the discharge end of the pipe shall be located beneath the liquid solvent surface.

xii. The idling and downtime mode covers shall be closed at all times during idling and downtimes except during maintenance of the machine when the solvent has been removed and during addition of solvent to the machine.

xiii. If a lip exhaust is used on the on-line cleaning machine, the ventilation rate shall not exceed  $20 \text{ m}^3/\text{min}/\text{m}^2$  ( $65 \text{ ft}^3/\text{min}/\text{ft}^2$ ) of on-line cleaning machine open area, unless a higher rate is necessary to meet OSHA requirements.

xiv. Minimize openings during operation so that entrances and exits silhouette workloads with an average

clearance between the parts and the edge of the portal opening of less than 10 centimeters (4 inches) or less than 10 percent of the width of the opening.

f. Standards for cleaning machines not having a solvent/air interface. This paragraph applies to cleaning machines that do not have a solvent/air interface. These cleaning machines include, but are not limited to, airless and airtight cleaning systems.

1. The owner or operator of each machine shall maintain a log of solvent additions and deletions for each machine including the weight of solvent contained in activated carbon or other adsorbent material used to control emissions from the cleaning machine.

2. The owner or operator of each machine shall demonstrate that the emissions from each machine, on a three-month rolling average, are equal to or less than the allowable emission limit determined using Equation 1 below.

$$EL = 330 (\text{Vol})^{0.6} \quad (\text{Eq. 1})$$

where:

EL = the three-month rolling average monthly emission limit (kilograms/month).

Vol = the cleaning capacity of machine (cubic meters).

3. The owner or operator of each machine shall operate the machine in conformance with the manufacturer's instructions and good air pollution control practices.

4. The owner or operator of each machine equipped with a carbon adsorber shall maintain and operate the carbon adsorber system to reduce solvent emissions in the exhaust to a level not exceed 25 parts per million, averaged over one complete adsorption cycle or 24 hours, whichever is less.

5. A permanent, conspicuous label summarizing the operating requirements in paragraph f.7. below.

6. The owner or operator of a solvent cleaning machine complying with paragraph f. shall demonstrate compliance with the applicable 3-month rolling average monthly emission limit on a monthly basis. If the applicable 3-month rolling average monthly emission limit is not met, an exceedance has occurred. All exceedances shall be reported to the Department within 30 days of the determination of the exceedance.

7. Cleaning machines not having a solvent/air interface shall be operated in accordance with the following procedures:

i. Waste solvent, still bottoms, and sump bottoms shall be collected and stored in closed containers. The closed containers may contain a device that allows pressure relief, but does not allow liquid solvent to drain from the container.

ii. Cleaned parts shall be drained at least 15 seconds or until dripping ceases, whichever is longer. Parts having cavities or blind holes shall be tipped or rotated while the part is draining. During the draining, tipping or rotating, the parts shall be positioned so that solvent drains directly into the cleaning machine.

iii. Parts or parts baskets shall not be removed from the cleaning machine until dripping has ceased.

iv. Sponges, fabric, wood, leather, paper products, and other absorbent materials shall not be cleaned or dried in the cleaning machines.

v. Spills during solvent transfer and use of the cleaning machines shall be cleaned up immediately, and the wipe rags or other absorbent material shall be immediately stored in covered containers for disposal or recycling.

vi. Work area fans shall be located and positioned so that they do not blow across the opening of the cleaning machine.

vii. When solvent is added to or drained from the cleaning machine, the solvent shall be transferred using threaded or other leakproof couplings and the discharge end of the pipe shall be located beneath the liquid solvent surface.

8. The owner or operator of a solvent cleaning machine complying with paragraph f. shall maintain records and determine compliance with the applicable provisions in accordance with the following:

i. On the first operating day of every month ensure that the solvent cleaning machine system contains only clean liquid solvent. This includes, but is not limited to, fresh unused solvent, recycled solvent, and used solvent that have been cleaned of soils. A fill line must be indicated during the first month the measurements are made. The solvent level within the machine must be returned to the same fill-line each month, immediately prior to calculating monthly emissions. The solvent cleaning machine does not have to be emptied and filled with fresh unused solvent prior to the calculations.

ii. Using the records of all solvent additions and deletions for the previous monthly reporting period, determine total solvent emissions, E, using Equation 2, below:

$$E = SA - LSR - SSR \quad (\text{Eq. 2})$$

where:

E = the total VOC solvent emissions from the solvent cleaning machine during the most recent monthly reporting period (kilograms of solvent per month).

SA = the total amount of VOC liquid solvent added to the solvent cleaning machine during the most recent monthly reporting period (kilograms of solvent per month).

LSR = the total amount of VOC liquid solvent removed

from the solvent cleaning machine during the most recent monthly reporting period (kilograms of solvent per month).

SSR = the total amount of VOC solvent removed from the solvent cleaning machine in solid waste during the most recent monthly reporting period (kilograms of solvent per month), as determined from tests conducted using Method 25D in appendix A of 40 CFR part 60 or by engineering calculations included in the compliance report.

iii. Determine the monthly rolling average solvent emission, EA, using Equation 3, below:

$$EA = (E_{j=1} + E_{j=2} + E_{j=3}) / 3 \quad (\text{Eq. 3})$$

where:

EA = the average VOC solvent emissions over the preceding 3 monthly reporting periods (kilograms of solvent per month).

E = the total VOC solvent emissions for each month (j) for the most recent 3 monthly reporting periods (kilograms of solvent per month).

j = 1 = the most recent monthly reporting period.

j = 2 = the monthly reporting period immediately prior to j = 1.

j = 3 = the monthly reporting period immediately prior to j = 2.

g. Alternative standard. As an alternative to meeting the requirements of paragraphs d. or e. of this Section, the owner or operator of a batch vapor or in-line cleaning machine can elect to comply with the requirements of paragraphs g.1. through g.4. The owner or operator shall maintain records sufficient to demonstrate compliance. The records shall include, at a minimum, the quantity of solvent added to and removed from the solvent cleaning machine, the dates of the addition and removal, and the calculations of the monthly rolling 3-month average emission limit.

1. The owner or operator shall:

i. Maintain a log of solvent additions and deletions for each solvent cleaning machine.

ii. Ensure that emissions from each solvent cleaning machine are equal to or less than the allowable emission limit presented in Table 1.

Table 1 -- Emission Limits for Batch Vapor and In-line Cleaning Machines

Solvent cleaning machine	3-Month rolling average monthly emission limit (kilograms/square meters/month)
Batch vapor cleaning machines	150

Existing in-line cleaning machines 153

New in-line cleaning machines 99

2. In addition to the requirements of paragraph g.1. of this Section, the owner or operator of a cleaning machine shall comply with the following:

i. Paragraphs d.1.ix. and d.4. for batch vapor cleaning machines.

ii. Paragraphs e.1.ix. and e.3. for in-line cleaning machines.

3. The owner or operator of a solvent cleaning machine complying with paragraph g. shall demonstrate compliance with the applicable 3-month rolling average monthly emission limit on a monthly basis. If the applicable 3-month rolling average monthly emission limit is not met, an exceedance has occurred. All exceedances shall be reported to the Department within 30 days of the determination of the exceedance.

4. The owner or operator of a solvent cleaning machine complying with paragraph g. shall maintain records and determine compliance with the applicable provisions in accordance with the following:

i. On the first operating day of every month ensure that the solvent cleaning machine system contains only clean liquid solvent. This includes, but is not limited to, fresh unused solvent, recycled solvent, and used solvent that have been cleaned of soils. A fill line must be indicated during the first month the measurements are made. The solvent level within the machine must be returned to the same fill-line each month, immediately prior to calculating monthly emissions. The solvent cleaning machine does not have to be emptied and filled with fresh unused solvent prior to the calculations.

ii. Using the records of all solvent additions and deletions for the previous monthly reporting period, determine total solvent emissions, E, using Equation 4, below:

$$E = (SA - LSR - SSR) / \text{AREA} \quad (\text{Eq. 4})$$

where:

E = the total VOC solvent emissions from the solvent cleaning machine during the most recent monthly reporting period (kilograms of solvent per square meter of solvent/air interface area per month).

SA = the total amount of VOC liquid solvent added to the solvent cleaning machine during the most recent monthly reporting period (kilograms of solvent per month).

LSR = the total amount of VOC liquid solvent removed from the solvent cleaning machine during the most recent

monthly reporting period (kilograms of solvent per month).

SSR = the total amount of VOC solvent removed from the solvent cleaning machine in solid waste during the most recent monthly reporting period (kilograms of solvent per month), as determined from tests conducted using Method 25D in appendix A of 40 CFR part 60 or by engineering calculations included in the compliance report.

Area = the solvent/air interface area of the solvent cleaning machine (square meters).

iii. Determine the monthly rolling average solvent emission, EA, using Equation 5, below:

$$EA = (E_{j=1} + E_{j=2} + E_{j=3}) / 3 \quad (\text{Eq. 5})$$

where:

EA = the average VOC solvent emissions over the preceding 3 monthly reporting periods (kilograms of solvent per square meter of solvent/air interface area per month).

E = the total VOC solvent emissions for each month (j) for the most recent 3 monthly reporting periods (kilograms of solvent per square meter of solvent/air interface area per month).

j = 1 = the most recent monthly reporting period.

j = 2 = the monthly reporting period immediately prior to j = 1.

j = 3 = the monthly reporting period immediately prior to j = 2.

h. Monitoring. The owner or operator of a solvent cleaning machine subject to the provisions of paragraphs d. through g. of this Section shall conduct monitoring as follows.

1. If a freeboard refrigeration device is used to comply with this Section, the owner or operator shall use a thermometer or thermocouple to measure the temperature at the center of the air blanket during the idling mode. Measurements and recordings shall be made weekly.

2. If a superheated vapor system is used to comply with this Section, the owner or operator shall use a thermometer or thermocouple to measure the temperature at the center of the superheated solvent vapor zone while the solvent cleaning machine is in the idling mode. Measurements and recordings shall be made weekly.

3. If a cover (working mode, downtime mode, and/or idling mode cover) is used to comply with this Section, the owner or operator shall conduct a visual inspection to determine if the cover is opening and closing properly, completely covers the cleaning machine openings when closed, and is free of cracks, holes, and other defects. Observations and recordings shall be made monthly.

4. If dwell is used to comply with this Section, the owner or operator shall determine the actual dwell time by measuring the period of time that parts are held within the

freeboard area of the solvent cleaning machine after cleaning or drying. Measurements and recordings shall be made monthly.

5. The owner or operator shall determine the automated parts handling system speed by measuring the time it takes to travel a measured distance. The speed is equal to the distance in meters or feet divided by the time in minutes (meters or feet per minute). Measurements and recordings shall be made monthly.

6. If reduced room draft is used to comply with this Section, the owner or operator shall determine the average wind speed and controlling room parameters (i.e., redirecting fans, closing doors and windows, etc.) as follows.

i. Initially measure the wind speed within 6 inches above the top of the freeboard area of the solvent cleaning machine in accordance with the following:

A. Determine the direction of the wind current by slowly rotating a velometer or similar device until the maximum speed is located.

B. Orient a velometer in the direction of the wind current at the four corners of the machine.

C. Record the reading for each corner.

D. Average the values obtained at each corner and record the average wind speed.

ii. Record the room parameters established during the initial compliance test to achieve the reduced room draft.

iii. Quarterly monitor of the wind speed in accordance with paragraph h.6.i.

iv. Weekly monitoring of the room parameters as specified in paragraph h.6.

7. If an enclosure (full or partial) is used to achieve reduced room draft, the owner or operator shall conduct an initial monitoring test of the wind speed within the enclosure by slowly rotating a velometer inside the entrance to the enclosure until the maximum speed is located and recorded. Measurements and recordings shall be made monthly. The owner or operator shall also conduct a monthly visual inspection of the enclosure to determine if it is free of cracks, holes, and other defects.

8. The owner or operator of a using a carbon adsorber to comply with this Section shall measure and record the concentration of VOC solvent in the exhaust of the carbon adsorber whenever the solvent cleaning machine is in the working mode and/or is venting to the carbon adsorber. The concentration shall be determined through a sampling port within the exhaust outlet that is easily accessible, located downstream from no other inlet, and located at least 8 stack or duct diameters downstream and 2 stack or duct diameters upstream from any flow disturbance such as a bend, expansion, contraction, or outlet

i. Recordkeeping. The owner or operator of a solvent cleaning machine subject to this Section shall maintain the following records in a readily accessible location for a least 5

years and shall make these records available to the Department, upon verbal or written request:

1. The log of operating times for the carbon adsorber, if applicable.
2. The maintenance record for the carbon adsorber, such as replacement of the activated carbon bed, if applicable.
3. The maintenance record for each control option used, such as replacement of a heater in the superheated vapor recycle system, if applicable.
4. The logs and calculations demonstrating compliance with the allowable emission limits in paragraphs f. and g. of this Section.
5. The results of all monitoring conducted in accordance with the requirements in paragraph h. of this Section.

j. Reporting. The owner or operator of a solvent cleaning machine subject to this Section shall:

1. Comply with the initial compliance certification requirements of Section 5.a. of this regulation.
2. Comply with the requirements of Section 5.b. of this regulation regarding reports of excess emissions, as well as complying with other State of Delaware exceedance reporting requirements.

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## DIVISION OF AIR & WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code,  
Chapters 60, (7 Del.C. Ch. 60)

**Secretary's Order No.: 2001-A-0035**

**RE: Proposed Amendment to Regulation 38  
(Emission Standards for Hazardous Air Pollutants for  
Source Categories) Subpart "T"  
- Emission Standard for Halogenated Solvent Cleaning -**

**Date of Issuance: October 1, 2001**

**Effective Date of the Amendment: November 11, 2001**

### I. Background

On Tuesday, August 28, 2001, a public hearing was held in the Richardson and Robbins Auditorium of DNREC in Dover to receive comment on the proposed amendment of Regulation 38 (Emission Standards for Hazardous Air Pollutants for Source Categories), Subpart "T" - Emission Standard for Halogenated Solvent Cleaning - of the Regulations Governing the Control of Air Pollution. The Department is proposing this regulation to add a MACT (Maximum Achievable Control Technology) standard to

reduce the emissions of hazardous air pollutants (HAPs) from halogenated solvent cleaning and drying machines. On June 25, 2001, DNREC conducted a public workshop regarding this issue, at which time the Department discussed the regulatory requirements currently being proposed with those members of the public that attended the same.

This proposed amendment is for the adoption of the Federal MACT standard that applies to solvent cleaning machines that use one or a combination of six specific halogenated solvents. The Department is undertaking this regulatory action to protect the air resources of the State of Delaware from pollution, in the interest of the public's health, safety, and welfare. No one from the public attended this public hearing, and there were no written comments received by the Department regarding the proposed amendment of Regulation 38, Subpart "T". Proper notice of the hearing was provided as required by law.

After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared his report and recommendation in the form of a Hearing Officer's Report to the Secretary dated September 27, 2001, and that memorandum is expressly incorporated herein by reference.

### II. Findings and Conclusions

On the basis of the record developed in this matter, it appears that AQM has provided a sound basis for the proposed adoption of Regulation 38, Subpart "T", and has, where necessary, made non-substantive changes in response to some of the suggestions offered to the Department by EPA with respect to this amendment.

### III. Order

It is hereby ordered that the proposed amendments to Regulation 38, Subpart "T", including those revisions suggested by AQM, be promulgated in final form in accordance with the customary statutory procedure.

#### IV. Reasons

These amendments will aid in the Department's ongoing responsibility to develop regulations that would reduce the risks to public health caused by the emissions of pollutants from point sources in Delaware, by adopting Federal MACT standards by reference into Delaware's Regulation 38, in furtherance of the policy and purposes of 7 Del. C., Ch. 60.

Nicholas A. DiPasquale, Secretary

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**Subpart T Emission Standards for Halogenated Solvent Cleaning**

The provisions of Subpart T - National Emission

Standards for Halogenated Solvent Cleaning, of Title 40, Part 63 of the Code of Federal Regulations, dated of July 1, 2000 and as amended on Sept. 8, 2000, are hereby adopted by reference with the following changes:

(a) Except as shown in Table T-1 of Subpart T, "Department" shall replace "Administrator".

(b) Paragraph 63.460(b) shall be replaced with the following language: "Owners or operators of affected sources subject to the provisions of this subpart must also comply with the requirements of subpart A of this regulation, according to the applicability of subpart A of this regulation to such sources, as identified in Table 1 of this subpart."

(c) The following dates shall be replaced by the date [October November] 11, 2001:

- (i) December 2, 1994;
- (ii) August 29, 1995;
- (iii) December 2, 1997; and
- (iv) December 2, 1999.

(d) The opening sentence of Section 63.461 shall be replaced with the following language: "Unless defined below, all terms in this subpart have the meanings given them in the Act or in subpart A of this regulation:"

(e) The definition of Administrator in Section 63.461 shall be replaced with the following language: "Administrator means the Administrator of the United States Environmental Protection Agency."

(f) The definition of Existing in Section 63.461 shall be replaced with the following language: "Existing means any solvent cleaning machine the construction or reconstruction of which was commenced on or before November 29, 1993. An existing solvent cleaning machine moved within a contiguous facility or to another facility under the same ownership remains an existing machine."

(g) The definition of Part in Section 63.461 shall be replaced with the following language: "Part means any object that is cleaned or dried in a solvent cleaning machine. Parts include, but are not limited to, discrete parts, assemblies, sets of parts, and parts cleaned or dried in a continuous web cleaning machine (i.e., continuous sheets of metal or film)."

(h) The definition of Solvent cleaning machine in Section 63.461 shall be replaced with the following language: "Solvent cleaning machine means any device or piece of equipment that uses halogenated HAP solvent liquid or vapor to remove soils from the surfaces of materials. Types of solvent cleaning machines include, but are not limited to, batch vapor, in-line vapor, in-line cold, and batch cold solvent cleaning machines. Buckets, pails, and beakers with capacities of one liter (30 ounces) or less are not considered solvent cleaning machines."

(i) The definition of Working mode in Section 63.461 shall be replaced with the following language: "Working mode means the time period when the solvent cleaning

machine is actively cleaning or drying parts."

(j) Paragraph 63.462(b) shall be replaced with the following language: "Each owner or operator of a remote-reservoir batch cold solvent cleaning machine shall employ a tightly fitting cover over the sink-like work area that shall be closed at all times except during the cleaning of parts."

(k) Paragraph 63.462(c) shall be replaced with the following language: "Each owner or operator of a batch cold solvent cleaning machine complying with paragraph (a) or (b) of this section shall comply with the work and operational practice requirements specified in paragraphs (c)(1) through (c)(11) of this section as applicable."

(l) Paragraph 63.462(c)(2) shall be replaced with the following language: "If a flexible hose or flushing device is used, flushing shall be performed only within the freeboard area of the solvent cleaning machine. The solvent spray shall be a solid fluid stream, not an atomized or shower spray, at a pressure that does not exceed 10 pounds per square inch gauge."

(m) Paragraph 63.462(c)(3) shall be replaced with the following language: "The owner or operator shall drain solvent cleaned parts for 15 seconds or until dripping has stopped, whichever is longer. Parts having cavities or blind holes shall be tipped or rotated while draining. During the draining, tipping or rotating, the parts shall be positioned so the solvent drains directly into the solvent cleaning machine."

(n) Paragraph 63.462(c)(5) shall be replaced with the following language: "Spills during solvent transfer or use of the solvent cleaning machine shall be wiped up immediately. The wipe rags or other sorbent material shall be stored in closed containers meeting the requirements of paragraph (c)(1) of this section."

(o) Paragraph 63.462(c)(6) shall be replaced with the following language: "When a pump-agitated solvent bath is used, the owner or operator shall ensure that the agitator is operated to produce a rolling motion of the solvent with no observable splashing against tank walls or parts being cleaned. Air-agitated solvent baths shall not be used."

(p) Paragraph 63.462(c)(7) shall be replaced with the following language: "The owner or operator shall ensure that, when the cover is open, the cold cleaning machine is not exposed to drafts greater than 40 meters per minute (132 feet per minute), as measured between 1 and 2 meters (3.3 and 6.6 feet) upwind and at the same elevation as the tank lip. In addition, work area fans shall be located and positioned so that they do not blow across the opening of the solvent cleaning machine."

(q) Paragraphs 63.462(c)(10), 63.463(g)(4)(x), and 63.463(h)(3)(ix) shall be added and paragraph 63.463(d)(10) shall be replaced with the following language: "Each operator of a solvent cleaning machine shall complete and pass the applicable sections of the test of solvent cleaning procedures in appendix A of this subpart if requested during

an inspection by the Department.”

(r) Paragraph 63.462(c)(11) shall be added with the following language: “The owner or operator shall provide a permanent, legible, conspicuous label summarizing the operating requirements in paragraph (c) of this section.”

(s) Paragraph 63.463(b)(1)(i) shall be replaced with the following language: “Employ one of the control combinations listed in Table 463-1 of this subpart. Alternatively, equivalent methods of control can be submitted to and approved by the Administrator, using the procedure in Sec. 63.469.”

(t) Replace the title of Table 1 in Section 63.463 with the following title: “Table 463-1 -- Control Combinations for Batch Vapor Solvent Cleaning Machines With a Solvent/Air Interface Area of 1.21 Square Meters (13 Square Feet) or Less”.

(u) Paragraph 63.463(b)(1)(ii) shall be replaced with the following language: “Demonstrate that their solvent cleaning machine can achieve and maintain an idling emission limit of 0.22 kilograms per hour per square meter (0.045 pounds per hour per square foot) of solvent/air interface area as determined using the procedures in Sec. 63.465(a) and Method 307 in appendix A of 40 CFR part 63.”

(v) Paragraph 63.463(b)(2)(i) shall be replaced with the following language: “Employ one of the control combinations listed in Table 463-2 of this subpart. Alternatively, equivalent methods of control can be submitted to and approved by the Administrator, using the procedure in Sec. 63.469.”

(w) Replace the title of Table 2 in Section 63.463 with the following title: “Table 463-2 -- Control Combinations for Batch Vapor Solvent Cleaning Machines With a Solvent/Air Interface Area Greater than 1.21 Square Meters (13 Square Feet)”.

(x) Paragraph 63.463(b)(2)(ii) shall be replaced with the following language: “Demonstrate that their solvent cleaning machine can achieve and maintain an idling emission limit of 0.22 kilograms per hour per square meter (0.045 pounds per hour per square foot) of solvent/air interface area as determined using the procedures in Sec. 63.465(a) and Method 307 in appendix A of 40 CFR part 63.”

(y) Paragraph 63.463(c)(1)(i) shall be replaced with the following language: “Employ one of the control combinations listed in Table 463-3 of this subpart. Alternatively, equivalent methods of control can be submitted to and approved by the Administrator, using the procedure in Sec. 63.469.”

(z) Replace the title of Table 3 in Section 63.463 with the following title: “Table 463-3 -- Control Combinations for Existing In-Line Solvent Cleaning Machines”.

(aa) Paragraph 63.463(c)(1)(ii) shall be replaced with the following language: “Demonstrate that their solvent

cleaning machine can achieve and maintain an idling emission limit of 0.10 kilograms per hour per square meter (0.021 pounds per hour per square foot) of solvent/air interface area as determined using the procedures in Sec. 63.465(a) and Method 307 in appendix A of 40 CFR part 63.”

(bb) Paragraph 63.463(c)(2)(i) shall be replaced with the following language: “Employ one of the control combinations listed in Table 463-4 of this subpart. Alternatively, equivalent methods of control can be submitted to and approved by the Administrator, using the procedure in Sec. 63.469.”

(cc) Replace the title of Table 4 in Section 63.463 with the following title: “Table 463-4 -- Control Combinations for New In-Line Solvent Cleaning Machines”.

(dd) Paragraph 63.463(c)(2)(ii) shall be replaced with the following language: “Demonstrate that their solvent cleaning machine can achieve and maintain an idling emission limit of 0.10 kilograms per hour per square meter (0.021 pounds per hour per square foot) of solvent/air interface area as determined using the procedures in Sec. 63.465(a) and Method 307 in appendix A of 40 CFR part 63.”

(ee) Paragraph 63.463(d) shall be replaced with the following language: “Except as provided in Sec. 63.464 for all cleaning machines, each owner or operator of an existing or new batch vapor or in-line solvent cleaning machine shall meet all of the following required work and operational practices specified in paragraphs (d)(1) through (d)(15) of this section as applicable. The owner or operator of a continuous web cleaning machine shall comply with the requirements of paragraph (g) or (h) of this section, as appropriate, in lieu of complying with this paragraph.”

(ff) Add the following language at the end of paragraphs 63.463(d)(3), 63.463(g)(4)(ii), and 63.463(h)(3)(i): “The solvent spray shall be a solid fluid stream, not an atomized or shower spray.”

(gg) Paragraphs 63.463(d)(8), 63.463(g)(4)(v), and 63.463(h)(3)(iv) shall be replaced with the following language: “When solvent is added to or drained from any solvent cleaning machine, the solvent shall be transferred using threaded or other leak-proof couplings, and the discharge end of the pipe shall be located beneath the liquid solvent surface.”

(hh) Paragraph 63.463(d)(13) shall be added with the following language: “Spills during solvent transfer or use of the solvent cleaning machine shall be wiped up immediately. The wipe rags or other sorbent material shall be stored in closed containers meeting the requirements of paragraph (d)(11) of this section.”

(ii) Paragraphs 63.463(d)(14), 63.463(g)(4)(xii), and 63.463(h)(3)(xi) shall be added with the following language: “Work area fans shall be located and positioned so that they do not blow across the opening of the solvent

cleaning machine.”

(jj) Paragraph 63. 463(d)(15) shall be added with the following language: “The owner or operator shall provide a permanent, legible, conspicuous label summarizing the operating requirements in paragraph (d) of this section.”

(kk) Paragraph 63. 463(e)(2)(vii)(A) shall be replaced with the following language: “Ensure that the concentration of halogenated HAP solvents in the exhaust from this device does not exceed 25 parts per million of halogenated HAP solvents as measured using the procedure in Sec. 63.466(e). If the halogenated HAP solvent concentration in the carbon adsorber exhaust exceeds 25 parts per million, the owner or operator shall adjust the desorption schedule or replace the disposable canister, if not a regenerative system, so that the exhaust concentration of halogenated HAP solvent is brought below 25 parts per million.”

(ll) Paragraph 63. 463(e)(2)(x)(B) shall be replaced with the following language: “Maintain the selected air knife parameter value at the level determined in paragraph (e)(2)(x)(A) of this section.”

(mm) Paragraph 63. 463(e)(2)(xi)(B) shall be replaced with the following language: “Maintain the selected parameter value at the level determined in paragraph (e)(2)(xi)(A) of this section.”

(nn) Paragraph 63. 463(e)(3)(i) shall be replaced with the following language: “An exceedance has occurred if the requirements of paragraphs (e)(2)(ii)(B), (e)(2)(iii)(A), (e)(2)(iv)(A), (e)(2)(v), (e)(2)(vi)(B), (e)(2)(vi)(C), (e)(2)(vii)(B), (e)(2)(vii)(C), (e)(2)(viii), (e)(2)(ix)(A) through (e)(2)(ix)(D), (e)(2)(x)(A) through (e)(2)(x)(C), or (e)(2)(xi)(A) through (e)(2)(xi)(C) of this section have not been met.”

(oo) Paragraph 63. 463(e)(3)(ii) shall be replaced with the following language: “An exceedance has occurred if the requirements of paragraphs (e)(2)(i), (e)(2)(ii)(A), (e)(2)(iii)(B), (e)(2)(iv)(B), (e)(2)(vi)(A), (e)(2)(vii)(A), (e)(2)(ix)(E), (e)(2)(x)(D), or (e)(2)(xi)(D) of this section have not been met and are not corrected within 15 days of detection. Adjustments or repairs shall be made to the solvent cleaning system or control device to reestablish required levels. The parameter must be remeasured immediately upon adjustment or repair and demonstrated to be within required limits.”

(pp) Paragraph 63. 463(g)(2) shall be replaced with the following language: “If a carbon adsorber system can be demonstrated to the Department’s satisfaction to have an overall solvent control efficiency (i.e., capture efficiency times removal efficiency) of 70 percent or greater, this system is equivalent to the options in paragraph (g) of this section.”

(qq) Paragraph 63. 463(g)(4)(i)(A) shall be replaced with the following language: “Cover(s) to each solvent

cleaning machine shall be in place during the idling mode and during the downtime mode unless either the solvent has been removed from the machine or maintenance or monitoring is being performed that requires the cover(s) to not be in place. A continuous web part that completely occupies an entry or exit port when the machine is idle is considered to meet this requirement.”

(rr) Paragraph 63. 463(g)(4)(xi) shall be added with the following language: “Spills during solvent transfer or use of the solvent cleaning machine shall be wiped up immediately. The wipe rags or other sorbent material shall be stored in closed containers meeting the requirements of paragraph (g)(4)(vii) of this section.”

(ss) Paragraph 63. 463(g)(4)(xiii) shall be added with the following language: “The owner or operator shall provide a permanent, legible, conspicuous label summarizing the operating requirements in paragraph (g)(4) of this section.”

(tt) Paragraph 63. 463(h) shall be replaced with the following language: “Except as provided in Sec. 63.464, each owner or operator of a remote reservoir continuous web cleaning machine shall comply with paragraphs (h)(1) through (h)(3) of this section.”

(uu) Paragraph 63. 463(h)(1)(iii) shall be replaced with the following language: “If a carbon adsorber system can be demonstrated to the Department’s satisfaction to have an overall solvent control efficiency (i.e., capture efficiency times removal efficiency) of 70 percent or greater, this system is equivalent to the options in paragraphs (h)(1)(i) and (h)(1)(ii) of this section.”

(vv) Paragraph 63. 463(h)(3)(x) shall be added with the following language: “Spills during solvent transfer or use of the solvent cleaning machine shall be wiped up immediately. The wipe rags or other sorbent material shall be stored in closed containers meeting the requirements of paragraph (h)(3)(vi) of this section.”

(ww) Paragraph 63. 463(h)(3)(xii) shall be added with the following language: “The owner or operator shall provide a permanent, legible, conspicuous label summarizing the operating requirements in paragraph (h)(3) of this section.”

(xx) Paragraph 63. 464(a)(1)(ii) shall be replaced with the following language: “Ensure that the emissions from each solvent cleaning machine are equal to or less than the applicable emission limit presented in Table 464-1 of this subpart as determined using the procedures in Sec. 63.465(b) and (c).”

(yy) Replace the title of Table 5 in Section 63.464 with the following title: “Table 464-1 -- Emission Limits for Batch Vapor and In-Line Solvent Cleaning Machines With a Solvent/Air Interface”.

(zz) Paragraph 63. 464(a)(2)(ii) shall be added with the following language: “Ensure that the emissions from each solvent cleaning machine are equal to or less than the

appropriate limits as described in paragraphs (a)(2)(ii)(A) or (a)(2)(ii)(B) of this section, as applicable.”

(aaa) Paragraph 63.464(a)(2)(ii)(A) shall be replaced with the following language: “For cleaning machines with a cleaning capacity, as reported in Sec. 63.468(d), that is less than or equal to 2.95 cubic meters (104 cubic feet), the emission limit shall be determined using Table 464-2. If the cleaning capacity of the cleaning machine falls between two cleaning capacity sizes, then the lower of the two emission limits applies.”

(bbb) Replace the title of Table 6 in Section 63.464 with the following title: “Table 464-2 -- Emission Limits for Cleaning Machines Without a Solvent/Air Interface ”.

(ccc) Paragraph 63.465(a) shall be replaced with the following language: “Except as provided in paragraphs (f) and (g) of this section for continuous web cleaning machines, each owner or operator of a batch vapor or in-line solvent cleaning machine complying with an idling emission limit standard in Sec. 63.463(b)(1)(ii), (b)(2)(ii), (c)(1)(ii), or (c)(2)(ii) shall determine the idling emission rate of the solvent cleaning machine using Method 307 in appendix A of 40 CFR part 63.”

(ddd) Replace the definitions of Ei in paragraph 63.365(c)(3) with the following language: “Ei = halogenated HAP solvent emissions for each month (j) for the most recent 3 monthly reporting periods, (kilograms of solvent per square meter of solvent/air interface area per month).”

(eee) Equation 8 shall be replaced with the following equation: “ $E_o = (R_i * 100) / (R_i + S_{ai} - SS_{Ri})$  (Eq. 8)”

(fff) Paragraph 63.466(c) shall be replaced with the following language: “Except as provided in paragraph (g) of this section, each owner or operator of a batch vapor or in-line solvent cleaning machine complying with the equipment or idling standards in Sec. 63.463 shall monitor the hoist speed and record the results as described in paragraphs (c)(1) through (c)(4) of this section.”

(ggg) The entire content of Paragraph 63.466(e) shall be replaced with the following language: “Except as provided in paragraph (g) of this section, each owner or operator using a carbon adsorber to comply with this subpart shall measure and record the concentration of halogenated HAP solvents in the exhaust of the carbon adsorber daily. This test shall be conducted while the solvent cleaning machine is in the working mode and is venting to the carbon adsorber. The exhaust concentration shall be determined as specified in paragraphs (e)(1) and (e)(2) of this section.

(1) Measure the solvent concentration in the exhaust using one of the following analytical techniques:

(A) A colorimetric detector tube designed to measure a concentration of 25 parts per million by volume of the halogenated HAP solvent in air to an accuracy of  $\pm 25$  percent and used in accordance with the manufacturer’s instructions.

(B) A flame ionization analyzer used in

accordance with Method 25A in appendix A of 40 CFR part 60.

(C) A nondispersive infrared analyzer used in accordance with Method 25B in appendix A of 40 CFR part 60.

(2) Provide a sampling port for monitoring within the exhaust outlet of the carbon adsorber that is easily accessible and located at least 8 stack or duct diameters downstream from any flow disturbance such as a bend, expansion, contraction, or outlet; downstream from no other inlet; and 2 stack or duct diameters upstream from any flow disturbance such as a bend, expansion, contraction, inlet or outlet.”

(hhh) Paragraph 63.467(b)(4) shall be replaced with the following language: “If a carbon adsorber is used to comply with these standards, records of the date and results of the daily measurement of the halogenated HAP solvent concentration in the carbon adsorber exhaust required in Sec. 63.466(e).”

(iii) Paragraph 63.468(b) shall be replaced with the following language: “Each owner or operator of a new solvent cleaning machine subject to the provisions of this subpart shall submit an initial notification report to the Department. New sources shall submit this report as soon as practicable before the construction or reconstruction is planned to commence or ~~[October November]~~ 11, 2001, whichever is later. This report shall include all of the information required in Sec. 63.5(d)(1) of subpart A of this regulation, with the revisions and additions in paragraphs (b)(1) through (b)(3) of this section.”

(jii) Paragraph 63.468(b)(1) shall be replaced with the following language: “The report shall include a brief description of each solvent cleaning machine including machine type (batch vapor, batch cold, vapor in-line or cold in-line), solvent/air interface area, and existing controls.”

(kkk) Paragraph 63.468(b)(3) shall be replaced with the following language: “In lieu of Sec. 63.5(d)(1)(ii)(H) of subpart A of this regulation, the owner or operator must report an estimate of annual halogenated HAP solvent consumption for each solvent cleaning machine.”

(lll) Paragraph 63.468(c) shall be replaced with the following language: “Each owner or operator of a batch cold solvent cleaning machine subject to the provisions of this subpart shall submit a compliance report to the Department. For existing sources, this report shall be submitted to the Department no later than ~~[October November]~~ 11, 2001. For new sources, this report shall be submitted to the Department no later than 150 days after startup or ~~[October November]~~ 11, 2001, whichever is later. This report shall include the requirements specified in paragraphs (c)(1) through (c)(4) of this section.”

(mmm) Paragraph 63.468(d) shall be replaced with the following language: “Each owner or operator of a batch vapor or in-line solvent cleaning machine complying with

the provisions of Sec. 63.463 shall submit to the Department an initial statement of compliance for each solvent cleaning machine. For existing sources, this report shall be submitted to the Department no later than ~~[October November]~~ 11, 2001. For new sources, this report shall be submitted to the Department no later than 150 days after startup or October 11, 2001, whichever is later. This statement shall include the requirements specified in paragraphs (d)(1) through (d)(7) of this section.”

(nnn) Paragraph 63.468(d)(6) shall be replaced with the following language: “Each owner or operator of a solvent cleaning machine complying with the idling emission limit standards of Sec. 63.463(b)(1)(ii), (b)(2)(ii), (c)(1)(ii), and (c)(2)(ii) shall submit a test report for tests of idling emissions meeting the specifications in Method 307 in appendix A of 40 CFR part 63. This report shall comply with the requirements specified in paragraphs (d)(6)(i) through (d)(6)(iv) of this section.”

(ooo) Paragraph 63.468(d)(6)(iv) shall be replaced with the following language: “If a solvent cleaning machine vendor or third party test report is used, the owner or operator of the solvent cleaning machine shall comply with the requirements specified in paragraphs (d)(6)(iv)(A) and (d)(6)(iv)(B) of this section.”

(ppp) Paragraph 63.468(d)(7) shall be replaced with the following language: “If a carbon adsorber is used to comply with these standards, the date and results of the daily measurement of the halogenated HAP solvent concentration in the carbon adsorber exhaust required in Sec. 63.466(e).”

(qqq) Paragraph 63.468(e) shall be replaced with the following language: “Each owner or operator of a batch vapor or in-line solvent cleaning machine complying with the provisions of Sec. 63.464 shall submit to the Department an initial statement of compliance for each solvent cleaning machine. For existing sources, this report shall be submitted to the Department no later than ~~[October November]~~ 11, 2001. For new sources, this report shall be submitted to the Department no later than 150 days after startup or ~~[October November]~~ 11, 2001, whichever is later. The statement shall include the information specified in paragraphs (e)(1) through (e)(4) of this section.”

(rrr) Paragraph 63.468(i)(3) shall be replaced with the following language: “The Department does not object to a reduced frequency of reporting for the affected source as provided in paragraph (e)(3)(iii) in Sect. 63.10 of subpart A of this regulation.”

(sss) Paragraph 63.468(j) shall be replaced with the following language: “The owner or operator of any batch cold solvent cleaning machine that is not a major source and is not located at a major source, as defined in Regulation 30 of State of Delaware “Regulations Governing the Control of Air Pollution”, is exempt from title V permitting requirements in Regulation 30 for that source, provided the owner or operator is not otherwise required to obtain a title V

permit. The owner or operator of any other solvent cleaning machine subject to the provisions of this subpart is also subject to title V permitting requirements. These sources are deferred from title V permitting requirements until December 9, 2004, if the source is not a major source and is not located at a major source, as defined in Regulation 30, and is not otherwise required to obtain a title V permit. All sources receiving a deferral under this section shall submit a title V permit application by December 9, 2005. All sources receiving a deferral from title V permitting requirements shall comply with the provisions of this subpart applicable to area sources.”

(ttt) Paragraph 63.468(k) shall be replaced with the following language: “Each owner or operator of a solvent cleaning machine requesting an equivalency determination, as described in Sec. 63.469 shall submit an equivalency request report to the Administrator (with copy to the Department). For existing sources, this report must be submitted to and approved by the Administrator no later than ~~[October November]~~ 11, 2001. For new sources, this report must be submitted to and approved by the Administrator prior to startup or ~~[October November]~~ 11, 2001, whichever is later.”

(uuu) The first sentence in Section 63.469 shall be replaced with the following language: “Upon written application to the Administrator (with copy to the Department), the Administrator may approve the use of equipment or procedures after they have been satisfactorily demonstrated to be equivalent, in terms of reducing emissions of methylene chloride, perchloroethylene, trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride or chloroform to the atmosphere, to those prescribed for compliance within a specified paragraph of this subpart.”

(vvv) Add the following language after Section 63.470: “[59 FR 61805, Dec. 2, 1994; as amended at 63 FR 68400, Dec. 11, 1998]”

(www) Option B. for test question 9 in Appendix A to Subpart T shall be replaced with the following language: “With the discharge end of the pipe below the liquid solvent surface”.

(xxx) Replace the title of table following Section 63.470 with the following title: “Table 1 of Subpart T of Regulation 38 - Subpart A (General Provisions) Applicability to Subpart T”.

(yyy) In Table 1 of Subpart T, change the applicability from each “No” to “Yes” for the following “General provision references”:

- (i) “63.1(b)(2)”;
- (ii) “63.1(b)(3)”;
- (iii) “63.1(e)”;
- (iv) “63.5(b)(3)”;
- (v) “63.5(c)”;
- (vi) “63.5(d)-(f)”;
- and
- (vii) “63.9(b)(4)”.

(zzz) In Table 1 of Subpart T, delete the comment(s) for the following "General provision references":

- (i) "63.1(b)(3)";
- (ii) "63.5(b)(3)";
- (iii) "63.5(d)-(f)";
- (iv) "63.6(c)(1)-(2)"; and
- (v) "63.9(b)(4)".

(aaaa) In Table 1 of Subpart T, the comment for 63.1(a)(4) under "General provision references" shall be replaced with the following language: "Table 1 to Subpart T specifies applicability of each paragraph in subpart A to subpart T."

(bbbb) In Table 1 of Subpart T, the comment for 63.1(b)(2) under "General provision references" shall be replaced with the following language: "However, subpart T exempts certain BCC from Regulation 30 permitting requirements."

(cccc) In Table 1 of Subpart T, the comments for 63.1(c)(2) under "General provision references" shall be replaced with the following language: "Subpart T, Sec. 63.468[(h) (j)], indicates a title V permit exemption for halogenated HAP batch cold solvent cleaning machines that are not major sources [or and are not] located at a major source[, as defined in Regulation 30, and are not otherwise required to obtain a title V permit]. This section also specifies a deferral from the requirement of a title V permit for owners or operators of solvent cleaning machines subject to subpart T provisions that are not major sources [or and are] not located at a major source[, as defined in Regulation 30, and are not otherwise required to obtain a title V permit]."

(dddd) In Table 1 of Subpart T, the comments for 63.1(c)(5) under "General provision references" shall be replaced with the following language: "Subpart T does not require continuous monitoring systems (CMS) or continuous opacity monitoring systems (COMS). Therefore, notifications and requirements for CMS and COMS specified in subpart A do not apply to subpart T."

(eeee) In Table 1 of Subpart T, the comments for 63.6(c)(5) under "General provision references" shall be replaced with the following language: "Subpart T has the same requirements for affected halogenated HAP solvent cleaning machine subcategories that are located at area sources as it does for those located at major sources."

(ffff) In Table 1 of Subpart T, the comments for 63.7(g) under "General provision references" shall be replaced with the following language: "Subpart T specifies what is required to demonstrate idling emission standard compliance through the use of Method 307 in appendix A of 40 CFR part 63 and control device monitoring. Reports and records of testing and monitoring are required for compliance verification. Three runs of the test are required for compliance, as specified in Sec. 63.7(e) of subpart A."

(gggg) In Table 1 of Subpart T, the replace 63.9(g)(1)

under "General provision references" with the following language: "63.9(g)".

(hhhh) In Table 1 of Subpart T, the comments for 63.9(h) under "General provision references" shall be replaced with the following language: "Section 63.468 of subpart T requires an initial statement of compliance for existing sources to be submitted to the Department no later than ~~October~~ **November** 11, 2001. For new sources, this report is to be submitted to the Department no later than 150 days after startup or ~~October~~ **November** 11, 2001, whichever is later."

[(iii)] Paragraph 63.466(a)(5) shall be replaced with the following language: "As an alternative to complying with paragraph (a)(4) of this section, the owner or operator can provide data, sufficient to satisfy the Department, that demonstrate that the part temperature remains above the boiling point of the solvent at all times that the part is within the continuous web solvent cleaning machine. This data could include design and operating conditions such as information supporting any exothermic reaction inherent in the processing."

(jjjj) Paragraph 63.468(d)(6)(iv)(B) shall be replaced with the following language: "Demonstrate to the Department's satisfaction that the solvent emissions from the solvent cleaning machine for which the test report is being submitted are equal to or less than the solvent emissions from the solvent cleaning machine in the vendor test report."

**Table T-1 of Subpart T - Exceptions to "Department" as replacement of "Administrator" under Subpart T**

Reference	"Administrator" means "Administrator"	Comment
63.460(e)	Yes	=
63.461	Yes	As replaced.
63.463(b)(1)(i)	Yes	As replaced.
63.463(b)(2)(i)	Yes	As replaced.
63.463(c)(1)(i)	Yes	As replaced.
63.463(c)(2)(i)	Yes	As replaced.
63.463(d)(4)	Yes	As replaced.
63.463(d)(9)	Yes	=
63.463(f)(1)(ii)	Yes	=
63.463(f)(4)(ii)	Yes	=
63.463(g)(4)(vi)	Yes	=
63.463(h)(3)(v)	Yes	=
63.464(d)	Yes	=
<del>63.466(a)(5)</del>	<del>Yes</del>	<del>=</del>
63.466(f)(2)	Yes	=

63.466(g)	Yes	=
<del>63.468(d)(6)(iv)(B)</del>	<del>Yes</del>	<del>H</del>
63.468(k)	Yes	As replaced.
63.469	Yes	As replaced.
Table 1 of Subpart T	Yes	=

## DIVISION OF AIR & WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code,  
Chapters 60, (7 Del.C. Ch. 60)

**Secretary's Order No.:**  
**RE:Proposed Regulation 41**  
**(Limiting VOC Emissions from Consumer and**  
**Commercial Products) Section 3:**  
**-Portable Fuel Containers-**

**Date of Issuance: September 17, 2001**

**Effective Date of the Amendment: November 11, 2001**

### I. Background

On Wednesday, August 29, 2001, a public hearing was held in the Priscilla Building Conference Room of DNREC in Dover to receive comment on the proposed adoption of Regulation 41 (Limiting Emissions of Volatile Organic Compounds From Consumer and Commercial Products), Section 3 – Portable Fuel Containers of the Regulations Governing the Control of Air Pollution. The proposed Regulation 41 – Section 3 - specifically concerns the use of portable fuel containers, and is intended to reduce refueling emissions from equipment and engines that are predominantly refueled with portable containers. The Department is proposing these regulations to aid Delaware in attaining compliance with the ground-level ozone standard set by the Environmental Protection Agency (EPA). Regulations similar to the aforementioned proposed Section 3 are being developed by other States in the region. Also, similar regulations are already in effect in the State of California. Proper notice of the hearing was provided as required by law.

After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared his report and recommendation in the form of a Hearing Officer's Report to the Secretary dated September 14, 2001, and that memorandum is expressly incorporated herein by reference.

### II. Findings and Conclusions

On the basis of the record developed in this matter, it

appears that AQM has provided a sound basis for the proposed adoption of Regulation No. 41, Section 3. In addition, the record will show that the following findings have been made:

1. Proper notice of the hearing was provided as required by law.
2. This regulation will require each portable fuel container and/or spout sold to meet the following requirements:
  - Have an automatic shut-off and closure device;
  - Contain one opening for filling, pouring, and venting;
  - Provide certain fuel flow based on nominal capacity; and
  - Meet a permeation standard.

### III. Order

It is hereby ordered that the proposed adoption of Regulation No. 41, Section 3, be promulgated in final form in accordance with the customary and established rule-making procedure required by law.

### IV. Reasons

The adoption of Regulation 41, Section 3, will aid the State of Delaware in attaining compliance with the ground-level ozone standard set by the Environmental Protection Agency (EPA), and will assist the Department in furtherance of the policy and purposes of 7 Del. C., Ch. 60.

Nicholas A. DiPasquale, Secretary

#### Section 3 - Portable Fuel Containers ~~[10/31/01 11/1/01]~~

##### a. Applicability.

1. This Section applies to any person who sells, supplies, offers for sale, or manufactures for sale portable fuel container(s) or spout(s) or both portable fuel container(s) and spout(s) for use in the State of Delaware; except:

i Safety cans meeting the requirements of 29 CFR 1926, Subpart F.

ii Portable fuel containers with a nominal capacity less than or equal to one quart.

iii Rapid refueling devices with nominal capacities greater than or equal to four gallons provided such devices are designed for use in officially sanctioned off-highway motorcycle competitions, and either create a leak-proof seal against a stock target fuel tank or are designed to operate in conjunction with a receiver permanently installed on the target fuel tank.

iv. Portable fuel tanks manufactured specifically

to deliver fuel through a hose attached between the portable fuel tank and an outboard engine for the purpose of operating that outboard engine.

2. Compliance with the requirements of this Section does not exempt any spill-proof system or spill-proof spout from compliance with other applicable Federal or State requirements.

3. The requirements of this Section apply on and after January 1, 2003, except that, any portable fuel container or spout or both portable fuel container and spout manufactured before January 1, 2003 that does not meet the requirements of this Section, may be sold, supplied, or offered for sale until January 1, 2004, provided that the date of manufacture or a date code, representing the date of manufacture, is clearly displayed on the portable fuel container or spout.

4. Any person subject to any requirement of this Section may comply with an alternative control plan that has been approved by the Department and the U.S. EPA as part of Delaware's State Implementation Plan.

b. Definitions.

For the purpose of this Section, the following definitions apply:

"Fuel" means a hydrocarbon mixture used to power any spark ignition internal combustion engine.

"Manufacturer" means any person who imports, manufactures, produces, assembles, packages, repackages, or re-labels a portable fuel container or spout or both portable fuel container and spout.

"Nominal Capacity" means the volume, indicated by the manufacturer that represents the maximum recommended filling level.

"Outboard Engine" means a spark-ignition marine engine that, when properly mounted on a marine watercraft in the operating position, houses the engine and drive unit external to the hull of the marine watercraft.

"Permeation" means the process by which individual fuel molecules may penetrate the walls and various assembly components of a portable fuel container directly to the outside ambient air.

"Person" means any individual, public or private corporation, political subdivision, government agency, department or bureau of the State, municipality, industry, co-partnership, association, firm, estate or any legal entity whatsoever.

"Portable Fuel Container" means any container or vessel with a nominal capacity of ten gallons or less that is intended for reuse and that is designed or used primarily for receiving, transporting, storing, and dispensing fuel.

"Spill-Proof Spout" means any spout that complies with all of the performance standards specified in paragraph (c)(2) of this Section.

"Spill-Proof System" means any configuration of portable fuel container and firmly attached spout that

complies with all of the performance standards in paragraph (c)(1) of this Section.

"Spout" means any device that can be firmly attached to a portable fuel container, through which the contents of a portable fuel container can be dispensed.

"Target Fuel Tank" means any receptacle that receives fuel from a portable fuel container.

c. Standards.

1. No person subject to the requirements of this Section shall sell, supply, offer for sale, or manufactures for sale portable fuel container(s) or spout(s) or both portable fuel container(s) and spout(s) for use in the State of Delaware which does not:

i. Have an automatic shut-off that stops the fuel flow before the target fuel tank overflows.

ii. Automatically close and seal when removed from the target fuel tank, and remain completely closed when not dispensing fuel.

iii. Have only one opening for both filling and pouring.

iv. Provide a fuel flow rate and fill level of:

A. not less than one-half gallon per minute for portable fuel containers with a nominal capacity of:

1. less than or equal to 1.5 gallons and fills to a level less than or equal to 1 inch below the top of the target fuel tank opening; or

2. greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1 inch below the top of the target fuel tank opening if the spill-proof system clearly displays the phrase "Low Flow Rate" in type of 34 point or greater on each spill-proof system or label affixed thereto, and on the accompanying package, if any; or

B. not less than one gallon per minute for portable fuel containers with a nominal capacity greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1.25 inches below the top of the target fuel tank opening; or,

C. not less than two gallons per minute for portable fuel containers with a nominal capacity greater than 2.5 gallons.

v. Meet a permeation rate of 0.4 grams per gallon per day or less.

vi. Have a warranty from the manufacturer for a period of not less than one year against defects in materials and workmanship.

2. No person subject to the requirements of this Section shall sell, supply, offer for sale, or manufacture for sale any spout for use in the State of Delaware, which does not:

i. Have an automatic shut-off that stops the fuel flow before the target fuel tank overflows.

ii. Automatically close and seal when removed from the target fuel tank, and remain completely closed

when not dispensing fuel.

iii. Provide a fuel flow rate and fill level of:

A. not less than one-half gallon per minute for portable fuel containers with a nominal capacity of:

1. less than or equal to 1.5 gallons and fills to a level less than or equal to 1 inch below the top of the target fuel tank opening; or,

2. greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1 inch below the top of the target fuel tank opening if the spill-proof spout clearly displays the phrase "Low Flow Rate" in type of 34 point or greater on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto; or,

B. not less than one gallon per minute for portable fuel containers with a nominal capacity greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1.25 inches below the top of the target fuel tank opening; or,

C. not less than two gallons per minute for portable fuel containers with a nominal capacity greater than 2.5 gallons.

iv. Have a warranty from the manufacturer for a period of not less than one year against defects in materials and workmanship.

d. Testing Procedures.

1. Any manufacturer subject to the requirements of paragraph (c) of this Section shall perform the following compliance tests in accordance with test methods and procedures stated, or as otherwise approved by the Department and the Administrator of the EPA. Records of compliance testing shall be maintained for as long as the product is available for sale in Delaware, and test results shall be made available to the Department within 60 days of request.

i. The following tests shall be carried out to determine compliance with paragraph (c)(2) of this Section prior to the product being manufactured for sale in Delaware:

A. "Test Method 510, Automatic Shut-Off Test Procedure for Spill-Proof Systems and Spill-Proof Spouts" adopted by California Air Resources Board (CARB) on July 6, 2000. This test method is hereby adopted by reference.

B. "Test Method 511, Automatic Closure Test Procedure for Spill-Proof Systems and Spill-Proof Spouts" adopted by CARB on July 6, 2000. This test method is hereby adopted by reference.

C. "Test Method 512, Determination of Fuel Flow Rate for Spill-Proof Systems and Spill-Proof Spouts" adopted by CARB on July 6, 2000. This test method is hereby adopted by reference.

ii. The following tests shall be carried out to

determine compliance with paragraph (c)(1) of this Section prior to the product being manufactured for sale:

A. All of the test procedures stated in paragraph (d)(1)(i) of this Section.

B. "Test Method 513, Determination of Permeation Rate for Spill-Proof Systems," adopted by CARB on July 6, 2000. This test method is hereby adopted by reference.

e. Administrative Requirements.

1. Any manufacturer subject to the requirements of paragraph (c)(1) of this Section shall clearly display on each spill-proof system:

i. the phrase "Spill-Proof System";

ii. a date of manufacture or representative date code; and

iii. a representative code identifying the portable fuel container or portable fuel container and spout as subject to and complying with the requirements of paragraph (c)(1) of this Section.

2. Any person subject to the requirements of paragraph (c)(2) of this Section shall clearly display on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto:

i. the phrase "Spill-Proof Spout";

ii. a date of manufacture or representative date code; and

iii. a representative code identifying the spout as subject to and complying with the requirements of paragraph (c)(2) of this Section.

3. Any manufacturer subject to paragraph (e)(1) and/or paragraph (e)(2) of this Section shall file an explanation of both the date code and representative code with the Department prior to manufacturing the product for sale in the State of Delaware.

4. Any person subject to paragraph (e)(1) and/or paragraph (e)(2) of this Section shall clearly display a fuel flow rate on each spill-proof system or spill-proof spout, or label affixed thereto, and on any accompanying package.

5. Any person subject to paragraph (e)(2) of this Section shall clearly display the make, model number, and size of those portable fuel containers the spout is designed to accommodate.

6. Any person not subject to or not in compliance with paragraph (c) of this Section may not display the phrase "Spill-Proof System" or "Spill-Proof Spout" on the portable fuel container or spout, respectively, on any sticker or label affixed thereto, or on any accompanying package.

7. Any person subject to and complying with paragraph (c) of this Section, that due to its design or other features, cannot be used to refuel on-road motor vehicles shall clearly display the phrase "Not Intended For Refueling On-Road Motor Vehicles" in type of 34 point or greater on

each of the following:

i. For a portable fuel container or portable fuel container and spouts sold together as a spill-proof system, on the system or on a label affixed thereto, and on the accompanying package, if any; and

ii. For a spill-proof spout sold separately from a spill-proof system, on either the spill-proof spout, or a label affixed thereto, and on the accompanying package, if any.

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### DIVISION OF FISH & WILDLIFE

Statutory Authority: 7 Delaware Code,  
Section 6010, (7 Del.C. 6010)

#### Order No. 2001-FW-0038 Order

#### Summary Information

In accordance with 29 Del.C. §10113(5), an amendment to Shellfish Regulation No. S-55-A, HORSESHOE CRAB DREDGE PERMIT LOTTERY is in order to be adopted informally in order to make Shellfish Regulation S-55-A consistent with changes in basic law but which do not otherwise alter the substance of this regulation. The 141<sup>st</sup> General Assembly enacted Senate Bill 185 as amended by House amendment No.1 and Senate Amendment No.1 which struck 7 Del.C., Chapter 21 relative to oysters and substituted in lieu thereof a new Chapter 21 relative to oysters. In doing so, it changed the licensing of oyster vessels that harvested and/or transplanted oysters from natural oyster beds or from leased grounds to an oyster harvesting license issued to a person to harvest of oysters from the natural oyster beds or from leased shellfish grounds in the State. (§2101, 7 Del.C.).

As a result of the enactment of a new Chapter 21, 7 Del.C. relating to oysters, the Department adopted amendments to Shellfish Regulations Nos. S-7(b), S-9, S-11, S-13 and S-37 which struck them in their entirety (Order No. 2001-FW-0031).

Shellfish Regulation No. S-55-A, HORSESHOE CRAB DREDGE PERMIT LOTTERY, subsection (b) states: "(b) To be eligible an applicant for a horseshoe crab dredge permit shall be the current owner and operator of an oyster vessel licensed to transplant oysters from natural oyster beds according to procedures in Shellfish Regulation No. S-37, OYSTER VESSEL LICENSING FOR TRANSPLANTING OYSTERS FROM NATURAL OYSTER BEDS." Since Shellfish Regulation S-37 has been stricken and the licensing of oyster vessels has been changed to the licensing of persons to harvest oysters from natural oyster beds or from leased shellfish grounds in the State, S-55-A (b) should be

amended to reflect these changes to be consistent with a change in the basic law but which do not otherwise alter the substance.

#### Order

It is hereby ordered, this 3rd day of October, in the year 2001, that Shellfish Regulation No. S-55-A (b), a copy of which is attached hereto, is amended to make it consistent with changes in basic law but which do not otherwise alter the substance of this regulation. In doing so, the procedural requirements of 29 Del.C. are waived and this amendment is adopted informally. This Order shall be effective on November 10, 2001.

Nicholas A. DiPasquale, Secretary  
Department of Natural Resources  
And Environmental Control

#### "S-55-A Horseshoe Crab Dredge Permit Lottery

(a) The Department of Natural Resources and Environmental Control shall hold an annual lottery to select eligible individuals for the five horseshoe crab dredge permits authorized to be issued each year if more than five applications are received by the Department. Applications for an annual commercial horseshoe crab permit shall be accepted by the Department until 4:30 PM December 31 or 4:30 PM on the Friday preceding if December 31 is a Saturday or Sunday. If an annual lottery is necessary it shall be conducted at 1:00 PM on January 1, or the first work day thereafter, in the Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware."

(b) To be eligible an applicant for a horseshoe crab dredge permit shall be the current ~~owner and operator of an oyster vessel licensed to transplant oysters from natural oyster beds according to procedures in Shellfish Regulation No. S-37 OYSTER VESSEL LICENSING FOR TRANSPLANTING OYSTERS FROM NATURAL OYSTER BEDS.~~ holder of an oyster harvesting license issued by the Department.

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### DEPARTMENT OF PUBLIC SAFETY DIVISION OF BOILER SAFETY

Statutory Authority: 29 Delaware Code,  
Section 8210 (29 Del.C. § 8210)

#### Order

The Division of Boiler Safety ("The Division") held a properly noticed public hearing on October 3, 2001 pursuant to 29 Del.C. § 8210(b) to receive comment on proposed

additions, revisions, deletions, modifications and reservations to Division's proposed Rules and Regulations. The attendance sheets and transcribed minutes of this hearing are filed with the Division in lieu of a statement of the summary of evidence. The Division received no written comments, and there were no objections presented at the public hearing.

### **Decision**

The Division hereby adopts the Rules and Regulations proposed and a copy of the Rules and Regulations as adopted is attached to this Order.

It is so ordered this 11 day of October, 2001.

James B. Harlan  
Director, Division of Boiler Safety

Approved:  
Honorable James L. Ford, Jr.  
Secretary, Department of Public Safety

**\* Note: No changes were made to the regulation as originally proposed and published in the September 2001 issue of the Register at page 584 (5 DE Reg. 584). Therefore, the final regulation is not being republished. Please refer to the September 2001 issue of the Register or contact the Department of Public Safety, Division of Boiler Safety.**

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## **DEPARTMENT OF TRANSPORTATION**

### **DIVISION OF PLANNING AND POLICY**

Statutory Authority: 17 Delaware Code,  
Section 190, et seq. (17 Del.C. 190, et seq.)

### **State Scenic and Historic Highways Program**

#### **Summary of Evidence and Information Submitted**

The Department published a draft of the State Scenic and Historic Highways Program (Program) Guide in the September 1, 2001 edition of the Delaware Register of Regulations. Publication in the Delaware Register of Regulations also signified the start of the 30-day public comment period that began on the same date and ended on September 30, 2001. As means of providing additional information on the draft Program and facilitating greater

public review and comment, the Department held the three following public hearings, each of which were advertised in the Delaware Register of Regulations and in six newspapers throughout the State.

- Sussex County: Monday, September 17, 2001 from 4 p.m. at the DeIDOT South District Office in Georgetown.
- Kent County: Tuesday, September 18, 2001 from 4 p.m. at the DeIDOT Administration Building in Dover.
- New Castle County: Thursday, September 20, 2001 from 4 p.m. at the DeIDOT North District Office in Bear.

Staff from the Department was available during each of the public hearings to provide information and answer questions related to the draft Program, and a formal presentation was scheduled for 6 p.m. each evening. In addition, the public was able to ask questions or provide comments either by speaking with Department staff directly or by speaking with a court reporter who was present during each session to take individual comments, and to record the formal presentation and discussion that followed. Questionnaires were also available for members of the public to complete on-site or to mail-in.

As a result of the aforementioned public outreach, the following is a summary of the comments received related to the draft Program:

#### **Comments received from the September 17, 2001 public hearing in Sussex County**

Seven people attended the Sussex County public hearing. One person asked how the draft Program worked and whether it could be used to highlight resources in Sussex County other than those related to resort area recreation and tourism, and another was interested in learning how a particular section of Roue 113 could be nominated into the draft Program. None of the comments received questioned how the draft Program was developed or how it is organized, or included any specific recommendations for improving the draft Program and/or the draft Program Guide.

#### **Comments received from the September 18, 2001 public hearing in Kent County**

Seven people attended the Kent County public hearing, including two members of the State Scenic and Historic Highways Advisory Board (Advisory Board) who attended to support the Program. During the public hearing several questions were asked of staff in terms of the how the draft Program was organized and how it would work once implemented. Among the topics discussed were:

- The role of Advisory Board during the development of the draft Program;
- The role of the Secretary of Transportation in approving corridor designations and corridor management plans;
- The meaning of the term "increased maintenance" as it pertains to roadways that could be designated under the draft Program; and
- Whether there were minimum or maximum length limits for roadways that could be designated under the draft Program.

Based on the questions asked of staff and the discussions that followed, no objections to the draft Program were voiced and all those who spoke with staff were supportive of it. The Department did not receive any specific recommendations for improving the draft Program and/or the draft Program Guide. In addition, one questionnaire was completed and it complimented the Department on the draft Program in terms of how straightforward and easy to understand it is, and in terms of the flexibility it offers with regard to the length roadways need to be to be considered for designation.

#### **Comments received from the September 20, 2001 public hearing in New Castle County**

Eleven people attended the New Castle County public hearing, including three members of the Advisory Board that attended to support the Program. During the public hearing several questions were asked of staff in terms of the how the draft Program was organized and how it would work once implemented. Among the topics discussed were:

- The nomination and designation process;
- The relationship between the draft Program and local land use control; and
- The role of the draft Program in limiting new off-premises outdoor advertising.

Based on the questions asked of staff and the discussions that followed, no objections to the draft Program were voiced and all those who spoke with staff were supportive of it. As a result of the discussions held and the public hearing and as a follow-up the Department received a letter complimenting the draft Program and its readability, and suggesting a change in wording from Mr. Nathan J. LaComb. Specifically, attention was brought to the possibility that the wording of the second paragraph in the section titled What is the Effect of Designation as a Delaware Scenic and Historic Highway in Chapter 2 that pertains to outdoor advertising might be misleading and in need of clarification. This was the only specific recommendation received.

#### **Other comments**

The Department received a letter from Mr. D. Reed Macmillan, Director of the Kent County Department of Planning that generally supported the draft Program. He highlighted several opportunities the draft Program presented for coordination with other Kent County initiatives, and he specifically reiterated the role of the Kent County Levy Court in reviewing and approving and future land use policies or programs that might be suggested as part of developing corridor management plans.

In addition to the above, Department staff and its technical team made the following comments on the draft Program Guide as part of their final review of the document.

- Introduction, Goal 1, sixth point. This point reads "Ensure that to the extent possible that all scenic and historic highway designations are continuous." The concern is that this wording might indicate that the draft Program would support non-continuous roadway designations, which was not the intent of the Advisory Board when developing the draft Program.
- Chapter 1, Step 2- Corridor Plan Application, second paragraph. The last line of this paragraph states that a corridor plan must also have a short term Action Plan that covers the initial two years of implementation. This is not consistent with Chapter 3, Step 2- Corridor Plan, the last paragraph of this chapter, which states that the short term Action Plan should cover the first two to three years.

#### **Findings of Fact**

Based on the comments received and summarized above, and made the following changes to the draft Program:

- The sixth point under Goal 1 in the Introduction was changed to read "Ensure that all scenic and historic highway designations are continuous." This clarifies the intent of the Advisory Board with regard to whether designated roadways should be continuous.
- The second paragraph in the section titled What is the Effect of Designation as a Delaware Scenic and Historic Highway in Chapter 2 and clarified its intent with regard to outdoor advertising. The paragraph was revised to read as follows:

Secondly, the designation affects permits for new outdoor advertising signs that are placed on one property but advertise goods or services available on another property. Such new off-site/off-premise outdoor advertising signs are not permitted along

state Scenic and Historic Highways. This rule does not affect existing outdoor advertising.

- The first line of the last paragraph of Chapter 3, Step 2- Corridor Plan was changed to read "The Corridor Plan should include a short-term action plan covering the first two years if implementation of the Plan." This change makes the requirements for the Short Term Action Plan consistent throughout the document, specifically with how it is referenced in Chapter 1, Step 2- Corridor Plan Application, in the second paragraph.

These were the only specific change made to the draft Program, and they are noted in the full citation that is part of the section below.

### **Decision**

Pursuant to the authority in 17 Delaware Code, Section 190 et seq. Delaware Code, plus federal authority, and after due notice as required under the Administrative Procedures Act, the Department of Transportation is hereby adopting the Delaware State Scenic and Historic Highway Program, effective November 10, 2001.

Comments or questions regarding how this program will be administered should be directed to:

Joseph Cantalupo, Assistant Director of  
Planning and Policy  
Delaware Department of Transportation  
Division of Planning and Policy  
P.O. Box 778  
Dover, DE 19903  
(302) 760-2121 (telephone) (302) 739-2251 (fax)  
jcantalupo@mail.dot.state.de.us

B. David Petrosky, Project Planner  
Delaware Department of Transportation  
Division of Planning and Policy  
P.O. Box 778  
Dover, DE 19903  
(302) 760-2121 (telephone) (302) 739-2251 (fax)  
dpetrosky@mail.dot.state.de.us

Nathan Hayward III  
Secretary, Delaware Department of Transportation  
10/3/01

### **Program Guide**

#### **Delaware Scenic & Historic Highways**

##### **Introduction**

Delaware is rich in scenic, historic and cultural

resources. The first state to ratify the U.S. Constitution, Delaware's landscapes and communities tell stories from battles between warring colonial powers, to the rise of a mercantile economy among the mills of the Brandywine River, to the continuing importance of agriculture to the state, to the evolution of American recreational pastimes along the state's beckoning beaches.

These diverse resources and their stories are accessible to travelers and residents along road corridors that deserve special consideration of their unique features and special role in the highway system. To recognize Delaware's special road corridors, the General Assembly in 2000 created a Scenic and Historic Highway Program (17 Del.C. c. 1 §101).

This program guide provides an understanding of the vision for Delaware's Scenic and Historic Highway Program, and an overview of the designation process, including how you can nominate a roadway. It also provides information on identifying intrinsic qualities (scenic, historic, natural, cultural, recreational, and archeological), preparing corridor plans and seeking sources of support in implementing these plans.

#### **What is a Scenic and Historic Highway?**

A Scenic and Historic Highway is a transportation route which is adjacent to or travels through an area that has particular intrinsic scenic, historic, natural, cultural, recreational or archeological qualities. It is a road corridor that offers an alternative travel route to our major highways, while telling a story about Delaware's heritage, recreational activities or beauty. It is a route that is managed in order to protect its special intrinsic qualities and to encourage appreciation and/or development of tourism and recreational resources. Scenic and Historic Highways can also be called "scenic byways."

#### **Why would you want to seek this designation for a roadway?**

Scenic and Historic Highway designation provides official recognition of the special nature of a roadway corridor. This designation will heighten awareness and recognition of the community seeking the designation and help to boost community pride.

Additional community benefits may include:

- Increased business, tax revenue, and jobs from tourist dollars.
- Federal and state funding for planning and implementing a corridor plan.
- Protection for a resource that may become threatened.
- Improved maintenance for your road.
- Access to resources and expert assistance in managing the corridor.
- Identification on state highway maps, leading

to more tourism opportunities for the area.

- Assistance from state offices of economic development and tourism.

### **Relationship to personal property rights**

When a roadway is designated as a Delaware Scenic and Historic Highway, a Corridor Plan must be developed, which includes a process for involving property owners in a collaborative discussion of future plans for the highway corridor. The preparation of the Corridor Plan provides a means to consider the interests of all affected parties. Designating a roadway corridor as Scenic and Historic does not mean property owners will be told what to do with their property.

### **Program governance**

Delaware's Scenic and Historic Highways Program is a collaborative effort of Delaware's citizens, local, state and federal government. During the 2000 legislative session, the General Assembly passed Senate Bill 320 authorizing the Delaware Department of Transportation (DelDOT) to develop the Delaware Scenic and Historic Highways Program. Senate Bill 320 required that the program be developed under the guidance of the State Scenic and Historic Highways Advisory Board and it required that the Board be comprised of a wide range of interests. Members of the Board include representatives of county government, other state agencies, the outdoor advertising industry, the real estate industry and various environmental and historic preservation advocacy groups.

The State Scenic and Historic Highways Advisory Board assists and recommends in the designation, development, operation, management and promotion of scenic and historic highways. The program is managed by DelDOT. The Secretary of Transportation designates Delaware Scenic and Historic Highways based upon criteria outlined in this program guide and upon the recommendations of the State Scenic and Historic Highways Advisory Board.

DelDOT is responsible for an annual evaluation of the Scenic and Historic Highways Program that identifies changes needed to keep the Program current with the state of the practice. The annual evaluation also tracks the progress of sponsors of designated Scenic and Historic Highways in implementing corridor plans to support, preserve and manage the special qualities of their corridor. DelDOT provides an annual report to the Governor and General Assembly on the overall status of the Program and the individual highways designated under it.

### **National Scenic Byways Program**

Delaware's Scenic and Historic Highways Program has been spurred by the creation and policies of the National Scenic Byways Program, first established in 1991 by the

federal Intermodal Surface Transportation Efficiency Act (ISTEA). This program, managed by the U.S. Department of Transportation in partnership with state departments of transportation or other responsible state agencies, designates National Scenic Byways and All-American Roads based on their scenic, historic, recreational, cultural, natural and/or archeological intrinsic qualities.

Through 2000, 66 National Scenic Byways and 15 All-American Roads have been designated. Federal funds may be available to assist sponsors of state scenic byways. These funds may be used to prepare corridor management plans, to seek National Scenic Byway designation, or for other purposes including executing interpretive plans, preparing marketing materials, or addressing safety improvements needed due to scenic byway designation.

### **Program vision, goals and objectives**

Looking into the future, the State Scenic and Historic Highways Advisory Board discussed their vision for the Program, its accomplishments and contributions to the citizens of Delaware. They outlined the Vision, Goals and Objectives for the program as follows:

*The Delaware State Scenic and Historic Highways Program showcases the natural beauty and unique features of the state and fosters the preservation of natural, cultural and historic resources, while benefiting economic development through tourism and recreational opportunities.*

*Sites and features of the State Scenic and Historic Highways are apparent to all who travel Delaware roads, and the Program enjoys broad public participation and support.*

### **Vision**

The Delaware State Scenic and Historic Highways Program showcases the natural beauty and unique features of the state and fosters the preservation of natural, cultural and historic resources, while benefiting economic development through tourism and recreational opportunities.

Sites and features of the State Scenic and Historic Highways are apparent to all who travel Delaware roads, and the Program enjoys broad public participation and support.

### **Goal 1 - Evaluate and Designate State Scenic and Historic Highways.**

Determine the responsibilities of sponsors seeking to designate a corridor under the State Scenic and Historic Highways Program.

Determine the responsibilities of the State Department of Transportation in administering the State Scenic and Historic Highways Program.

Determine the responsibilities of the Scenic and Historic Highways Advisory Board in administering the State Scenic and Historic Highways Program.

Define the opportunities, benefits, and impacts of designation under the State Scenic and Historic Highways Program.

Assure compliance with FHWA requirements regarding outdoor advertising control.

Ensure ~~{to the extent possible}~~ that all scenic and historic highway designations are continuous.

Evaluate opportunities for multi-state scenic byway development.

**Goal 2 - Protect and/or enhance State Scenic and Historic Highways and their resources through a coordinated management program while ensuring the safe operation of these routes.**

Coordinate with other related federal, state, local and private sector programs and planning processes.

Determine the responsibility of local government in the management of designated State Scenic and Historic Highways.

Assist State Scenic and Historic Highway sponsors in locating and applying for federal, state and private funding available to support such highways.

Ensure adherence to Federal Scenic Byways Program requirements to afford the best opportunity for federal funding and designation where desired.

Protect the historic and scenic character of the highway while addressing the need for safe and efficient traffic flow.

Promote the use of Context Sensitive Design criteria and traffic calming measures.

Encourage multi-modal systems wherever feasible - auto, transit, pedestrian, and bicycle.

Address the needs of commerce in corridor management plans.

Support full range of public and private landscape conservation and historic preservation programs to afford resource protection to the intrinsic qualities of designated scenic highways.

Advocate for legislation to enhance funding opportunities for the intrinsic resources of designated scenic highways.

**Goal 3 - Benefit economic development through tourism and promote byway related educational and recreational opportunities.**

Promote tourism opportunities associated with State Scenic and Historic Highways.

Develop marketing programs to highlight State Scenic and Historic Highways.

Improve access to areas utilized for the purposes of recreation where appropriate while protecting the intrinsic qualities of the designated scenic highway and the recreation area.

Develop a unique identity for the State Scenic and Historic Highways Program.

Develop a creative range of interpretive materials on the State Scenic and Historic Highways Program and the corridors designated within it such as maps, brochures, a website, and wayside exhibits, among other ideas.

Coordinate with the Delaware Historic Markers Program and other educational programs with related purposes to the Scenic and Historic Highways Program.

**Goal 4 - Monitor and evaluate the implementation of the State Scenic and Historic Highways Program to ensure it continues to meet the needs of the State and its citizens.**

Develop an annual evaluation program that will:

Identify changes needed to keep the Program current with the state of the practice;

Track the progress of individual corridor management plans as well as conformance with the provisions of the Program; and

Provide an annual report to the Governor and General Assembly on the overall status of the Program and the individual highways designated under it.

**Chapter 1: Overview of Designation Process**

**Step 1 – Nomination Application**

The successful completion, review and evaluation of a Step 1 – Nomination Application results in the designation of a road by Delaware's Secretary of Transportation as a State Scenic and Historic Highway. The application can be submitted by anyone interested in seeking designation for a route as a Delaware Scenic and Historic Highway. The review process for the nomination focuses on an evaluation of the identified intrinsic qualities of the highway and on the input from a public involvement process carried out as part of preparing the Nomination Application.

**Impact of state designation as a scenic and historic highway**

Two principal impacts result from the designation of a route as a Delaware Scenic and Historic Highway. First, the sponsor for the route is eligible to apply through DelDOT to the Federal Highway Administration for grant funds to assist with the completion of a Corridor Plan for the Scenic and Historic Highway and/or may use the state designation status to assist in seeking funding from other sources to assist with the Corridor Plan.

Second, the designation affects permits for new off site/ off premises signs (outdoor advertising signs that are placed on one property, but advertise goods or services available on another property) on any roads controlled by the Highway Beautification Act of 1965. New off premise outdoor advertising signs are not permitted along state Scenic and Historic Highways. This rule does not affect existing outdoor advertising signs.

**Step 2 – Corridor Plan Application**

The successful completion, review and evaluation of a Step 2 – Corridor Plan Application results in approval of the Corridor Plan by Delaware's Secretary of Transportation, and then signing (with specially designed signs) of the Delaware Scenic and Historic Highway, identifying it on state maps and promoting it through the Delaware Tourism Office.

A Corridor Plan is a written document in which the highway sponsor describes the goals, strategies, and responsibilities for conserving and enhancing a scenic and historic highway's most valuable qualities. It is developed collaboratively with all those who have an interest in the future of the area included in the Scenic and Historic Highway corridor. It includes both a long-term Vision for what the Scenic and Historic Highway may become over time and also a short-term Action Plan that covers the initial two years of implementation of the Corridor Plan.

**Impact of approval of the Corridor Plan for a Delaware Scenic and Historic Highway**

The impact of approval of the Corridor Plan for a Delaware Scenic and Historic Highway is stated above. DeIDOT will provide signs for the route to indicate its designated status and will identify the route on state maps. The Delaware Tourism Office will promote the Scenic and Historic Highway in accord with the promotion and marketing plans included in the Corridor Plan.

**Chapter 2: Step 1 – Nomination Application****Who can nominate a route to become a Delaware Scenic and Historic Highway?**

Any interested party can nominate a route, including individuals; local governments; counties; tourism departments; historical societies; non-profit organizations; state and federal agencies; or a Corridor Advocacy Group formed of citizens, groups or local governments. The party nominating a route is called the sponsor.

**What information is required for the nomination?**

DeIDOT has prepared a nomination form to guide the sponsor in preparing the Step 1 – Nomination Application. The sponsor needs to provide the following information about the proposed Scenic and Historic Highway:

- A physical description of the route.
- Representative photographs.
- A map indicating the boundaries of the route that locates the intrinsic qualities along the corridor, and indicates land uses in the corridor.
- An intrinsic quality resource inventory.
- A written statement that summarizes and

evaluates the significance of the primary intrinsic quality for which the highway merits designation and that also describes the significance of any secondary intrinsic qualities present along the route.

- A written description of what a traveler will see when traversing the corridor.
- A description of public involvement conducted to date and the comments and input that have resulted from this process.

**Who reviews the nomination and what is the review process?**

DeIDOT's Scenic and Historic Highways Coordinator reviews the nomination application with representatives from the State Historic Preservation Office, Department of Natural Resources and Environmental Control, Delaware Tourism Office, and Department of Agriculture. This Evaluation Committee jointly makes a recommendation to DeIDOT's Director of Planning. If the Evaluation Committee's recommendation is that the Nomination is not complete or should not be approved, DeIDOT's Director of Planning will return the nomination application to the sponsor with a letter that specifies reasons for the disapproval and includes recommendations for how the application could be resubmitted, if appropriate.

If the Evaluation Committee's joint recommendation to the Director of Planning is favorable, the Director of Planning reviews the application and submits it with the Evaluation Committee's recommendation and with his or her recommendation to the State Scenic and Historic Highways Advisory Board for review. If the Advisory Board recommends approval, the application is submitted to the Secretary of Transportation for review and a final decision.

**What is the timeline for the review of Step 1 – Nomination Applications?**

There will be ongoing reviews of Step 1 – Nomination Applications by the Evaluation Committee and by the Advisory Board. As a guideline, DeIDOT will issue a response to the applicant within 120 days from the time that a complete Step 1 – Nomination Application is received.

**Who designates a roadway as a Delaware Scenic and Historic Highway?**

Designation is made by Delaware's Secretary of Transportation based on submission of the Step 1 – Nomination Application, joint review by the Evaluation Committee of state agency representatives, review by DeIDOT's Director of Planning and then review and recommendation for approval by the State Scenic and Historic Highways Advisory Board.

**What is the effect of designation as a Delaware Scenic**

**and Historic Highway?**

As stated in the preceding section, two principal impacts result from the designation of a route as a Delaware Scenic and Historic Highway. First, the sponsor for the route is eligible to apply through the Delaware Department of Transportation to the Federal Highway Administration for grant funds to assist with the completion of a Corridor Plan for the Scenic and Historic Highway and/or may use the state designation status to assist in seeking funding from other sources to assist with the Corridor Plan.

Secondly, the designation affects permits for new outdoor advertising signs that are placed on one property but advertise goods or services available on another property. ~~[New outdoor advertising signs are not permitted along state Scenic and Historic Highways. Such new off-site/off-premise outdoor advertising signs are not permitted along state Scenic and Historic Highways.]~~ This rule does not affect existing ~~[billboard signs outdoor advertising]~~.

Other benefits of designation as a Delaware Scenic and Historic Highway follow once the Corridor Plan that is described in the next chapter is approved.

**What are the designation criteria for Step 1 – Nomination Application?**

The primary criteria include consideration of the quality of the road's intrinsic scenic, historic, natural, cultural, recreational or archeological resources. The Sponsor should identify and provide documentation of the primary intrinsic quality for which they think the road merits designation as a Delaware Scenic and Historic Highway. The application should include a statement of significance for these resources to justify why the route merits designation.

While the route can qualify as a Delaware Scenic and Historic Highway based on the significance of just one intrinsic quality, applicants should also describe any secondary intrinsic qualities present along the route and provide a statement describing the significance of the resources.

Additional criteria include:

A requirement that the route proposed for designation must be continuous in order to encourage management of the entire route to protect its special intrinsic qualities and to support the best possible visitor experience along the route.

- Information to demonstrate a high level of public involvement and public support.
- The route must be a public route that safely accommodates two-wheel drive motor vehicles.

**Information about intrinsic qualities: definitions**

**Scenic Quality** is the heightened visual experience derived from the view of natural and man-made elements of

the visual environment of the scenic and historic highway corridor. The characteristics of the landscape are strikingly distinct and offer a pleasing and most memorable visual experience. All elements of the landscape – landform, water, vegetation, and man-made development – contribute to the quality of the corridor's visual environment. Everything present is in harmony and shares in the intrinsic qualities.

**Historic Quality** encompasses legacies of the past that are distinctly associated with physical elements of the landscape, whether natural or man-made, that are of such historic significance that they educate the viewer and stir an appreciation for the past. The historic elements reflect the actions of people and may include buildings, settlement patterns, and other examples of human activity. Historic features can be inventoried, mapped, and interpreted. Historic features must possess integrity of location, design, setting, material, workmanship, feeling, and association.

**Natural Quality** applies to those features of the visual environment that are in a relatively undisturbed state. These features predate the arrival of human populations and may include geological formations, fossils, landforms, water bodies, vegetation, and wildlife. There may be evidence of human activity, but the natural features reveal minimal disturbances.

**Cultural Quality** is evidence and expression of the customs or traditions of a distinct group of people. Cultural features include, but are not limited to, crafts, music, dance, rituals, festivals, speech, food, special events, vernacular architecture, etc. that are currently being practiced. The cultural qualities of the corridor could highlight one or more significant communities and/or ethnic traditions.

**Recreational Quality** involves outdoor recreational activities directly associated with and dependent upon the natural and cultural elements of the corridor's landscape. The recreational activities provide opportunities for active and passive recreational experiences including, but not limited to, rafting, boating, fishing and hiking. Driving the road itself may qualify as a pleasurable recreational experience. The recreational activities may be seasonal, but the quality and importance of the recreational activities as seasonal operations must be well recognized.

**Archeological Quality** involves those characteristics of the scenic and historic highway corridor that provide physical evidence of historic or prehistoric human life or activity that is visible and capable of being inventoried and interpreted. The corridor's archeological interest, as identified through ruins, artifacts, structural remains, and other physical evidence, has scientific significance that educates the viewer and stirs an appreciation for the past.

**How to inventory and evaluate your Corridor's intrinsic qualities**

In 1999, the Federal Highway Administration (FHWA)

published a booklet titled, "Byway Beginnings: Understanding, Inventorying, and Evaluating a Byway's Intrinsic Qualities." This publication is available on request from the National Scenic Byways Clearinghouse by calling 1-800-4byways and selecting extension #2. This publication provides information about inventorying and evaluating byways' intrinsic qualities. Although the booklet was prepared to assist byway sponsors seeking National Scenic Byway designation, nearly all of the information presented is applicable to sponsors seeking Delaware Scenic and Historic Highway designation.

One important difference between the FHWA publication's guidance and the criteria for Delaware's Scenic and Historic Highway designation should be noted. In discussing "Evaluating the Byway's Significance," on page 55 of the publication, the text references a need to demonstrate "regional" significance, defined as exhibiting at least one intrinsic quality that is representative of a geographic area encompassing two or more states. Delaware's designation criteria do not require that the intrinsic quality be found to have regional significance. Demonstrating significance in a statewide context is sufficient.

DeIDOT's Scenic and Historic Highways Coordinator is available to attend meetings and provide phone consultation to prospective Scenic and Historic Highway sponsors regarding the guidance provided in the FHWA publication and the evaluation of intrinsic qualities for purposes of designation as a Delaware Scenic and Historic Highway.

### **Chapter 3: Step – 2 Corridor Plan**

#### **What is a Corridor Plan?**

A Corridor Plan is a written document in which the Scenic and Historic Highway sponsor lays out the vision, goals and responsibilities for conserving and enhancing the corridor's most valuable qualities and describes how this will benefit economic development through tourism and recreational opportunities. The Corridor Plan presents a strategy for balancing concern for the intrinsic resources with the visitor's opportunity to experience the Scenic and Historic Highway. It explains how the participants are involved in and responsible for implementing the Plan.

#### **Where does a Corridor Plan fit into the designation process?**

A Corridor Plan is required as part of the 2nd Step of the designation process, following the formal designation of a highway as a Delaware Scenic and Historic Highway. The designation as a Scenic and Historic Highway qualifies sponsors for these highways to apply for matching federal National Scenic Byway grant funds to assist in completion of a Corridor Plan. This designation also results in applying to qualifying roads the federal requirement not to allow new

outdoor advertising signs to be erected on these roads.

Once a Corridor Plan for the Scenic and Historic Highway has been approved, signs will be placed along the route identifying it as a Delaware Scenic and Historic Highway. It will also be identified on state maps and promoted through the Delaware Tourism Office.

#### **Who is responsible for preparing the Corridor Plan?**

The sponsor of the Step 1 – Nomination Application is responsible for preparing the Corridor Plan or for contracting with a consultant to do this. It is the sponsor's responsibility to raise any funds needed to complete the Plan. As stated above, sponsors are eligible to apply for matching federal National Scenic Byway funds for this purpose. Information about these grants is available on the National Scenic Byway Program website, [www.byways.org](http://www.byways.org). Further information on sources of assistance is provided in Chapter 6 of this guide.

#### **What information must be included in a Corridor Plan?**

- Vision and Goals Statement with objectives and strategies for achieving the goals.
- Documentation of public involvement efforts to illustrate the support the corridor designation has received from the public.
- Stewardship of intrinsic qualities through resource preservation; through enhancing existing development and accommodating new development in a complementary manner.
- Tourism Development, including an explanation of the tourism potential of the corridor and a description of how the visitor's experience will be maximized and enhanced.
- Marketing and Promotion, including a signage plan supportive of the visitor experience.
- Resources Interpretation, including recommended locations for distributing information.
- Support and Implementation, including relationship to local government comprehensive plans.
- Funding Plan for implementing the Corridor Plan.
- Transportation and Safety, including consideration of appropriate design guidelines for Context Sensitive Design in the corridor, accommodating commercial traffic, accommodating multi-modal uses of the corridor to the extent feasible, and complying with outdoor advertising controls.
- Short-term Action Plan for implementation.

An appendix should include the following information from the Step 1 – Nomination Application:

- A physical description of the route.
- Representative photographs.
- A map indicating the boundaries of the route, that locates the intrinsic qualities along the corridor and indicates land uses in the corridor.
- An intrinsic quality resource inventory.
- A written statement that summarizes and evaluates the significance of the primary intrinsic quality for which the highway merits designation and that also describes the significance of any secondary intrinsic qualities present along the route.
- A written description of what a traveler will see when traversing the corridor.
- A description of public involvement conducted to date and the comments and input that have resulted from this process.

### **Who reviews the Corridor Plan and what is the review process?**

The DelDOT Scenic and Historic Highways Coordinator reviews the Step 2 – Corridor Plan Application and makes a recommendation to DelDOT's Director of Planning. DelDOT's Director of Planning submits the Corridor Plan Application to the State Scenic and Historic Highways Advisory Board for review along with his/her recommendation and comments. If the Board recommends approval, the application is submitted to the DelDOT Secretary of Transportation for review and a final decision.

### **What are the timelines for reviewing Step 2 – Corridor Plan Application?**

There will be ongoing reviews of Step 2 – Corridor Plan Applications by the Scenic and Historic Highways Coordinator and by the Advisory Board. Generally DelDOT will respond to the applicant within 90 days from the time that a complete Step 2 – Corridor Plan Application is received.

### **What is the impact of approval of a Corridor Plan?**

If the Corridor Plan is approved, DelDOT will provide signs for the route to indicate its designated status and will identify the route on state maps. Delaware's Office of Tourism will promote the Delaware Scenic and Historic Highway in accord with the promotion and marketing plans included in the Corridor Plan.

### **Information about elements that must be included in a Corridor Plan.**

The major elements that must be included in a Corridor Plan for a Delaware Scenic and Historic Highway are summarized in this section. Guidance on how to develop information on these elements can be found in the Federal Highway Administration's (FHWA) booklet titled,

"Community Guide to Planning and Managing a Scenic Byway." As with the publication, "Byway Beginnings," referenced in Chapter 3, this publication is available from the National Scenic Byways Clearinghouse by calling 1-800-4byways and selecting #2. Although the booklet was prepared to assist byway sponsors seeking National Scenic Byway designation, the information presented will be of great help to sponsors seeking to develop corridor plans for Delaware Scenic and Historic Highways.

- Vision and Goals Statement with objectives and strategies for achieving the goals

A Vision is a mental image of the condition of the Scenic and Historic Highway corridor and the accomplishments of the Sponsor group in the future (say 20 years from now). It is a corridor-wide expression of how the corridor will be viewed in the future. The Goals Statement elaborates on the Vision by identifying the broad goals that will implement the Corridor Plan. These will likely be oriented towards areas of 1) Resource protection, maintenance and enhancement; 2) Community support and participation; 3) Education and interpretation; 4) Economic development through tourism; and 5) Transportation and safety. An objective is an end that one strives to obtain, or an aim. A strategy is a plan or action to achieve an objective based on skillful understanding of how best to achieve that objective.

- Documentation of Public Involvement efforts to illustrate the support the corridor designation has received from the public

Every opportunity must be taken to generate regional support and commitment to the scenic and historic highway designation and to the development and eventual implementation of the Corridor Plan. A Scenic and Historic Highway's success can be assured only if local residents, business owners and public officials understand and support the designation and have a sense of participation and ownership of the Vision and Goals outlined in the Corridor Plan. Therefore, development of a Corridor Plan includes a concerted effort to actively engage the public throughout the process. This can be done by creating a broad-based steering committee to oversee the development of the Corridor Plan; conducting informative public meetings; involving citizens in small working group sessions to develop elements of the plan based upon their interests and expertise; keeping people informed of the Corridor Plan effort through newspaper articles; and many other techniques tailored to the needs of the specific community or communities.

The Corridor Plan should briefly document public involvement efforts during preparation of the Plan and outline a plan to assure on-going public involvement in the

implementation of corridor management objectives.

- Stewardship of intrinsic qualities through resource preservation; through enhancing existing development and accommodating new development in a complementary manner

The stewardship plan should address the strategies, tools and techniques that will be employed to manage, protect and enhance resources that distinguish the route. Specific strategies will vary widely across the state depending on local conditions, population, economic conditions, political climate and the intensity or severity of threats to the resources. Some examples of potential strategies include conservation easements, education programs and historic district designations. Identify the standards and management techniques which will be applied to the significant resources.

The Corridor Plan should describe how existing and new development might be enhanced while managing the corridor's significant resources. For example, are there any major intrusions on the enjoyment or character of the roadway? If so, describe what could be done to improve these conditions.

Strategies in individual Corridor Plans might recommend design review and such land management techniques as zoning, easements, and economic incentives.

The corridor should be maintained with particularly high standards, not only for travelers' safety and comfort, but also for preserving the highest levels of visual integrity and attractiveness. It may be adequate simply to continue existing regulations and policies or economic incentives, or new policies, programs or regulations may be needed. To determine the appropriate strategies, communities are encouraged to work with local, county and regional planning agencies. College or university landscape architecture, planning and tourism programs may also provide assistance.

- Tourism Development, including an explanation of the tourism potential of the corridor and a description of how the visitor's experience will be maximized and enhanced

Sponsors must provide a basic explanation of the tourism potential for the Scenic and Historic Highway. You should summarize how and to what degree the designation and promotion of the corridor will improve the local economy and indicate whether the area is already serving tourists or if tourism will be a new industry.

Identify visitor accommodations (e.g. gas, food, lodging, restrooms, emergency services, ATMs, phones, parking, etc.) that are available along the corridor. Assess whether the existing supply is adequate to meet the demand to be generated by the Scenic and Historic Highway. In

other words, what other services might be helpful to maximize the amount of time a visitor spends along the corridor?

Describe how the visitor's experience will be maximized and enhanced. Explain how intrusions on that experience will be minimized through making improvements to enhance that experience.

- Marketing and Promotion, including a signage plan supportive of the visitor experience

Sponsors must outline the objectives for marketing or promotion of the Scenic and Historic Highway. These goals will vary depending on the comments received during the public involvement process. Such goals may focus on doing a better job of educating residents about the heritage of the area, or may focus on increasing tourism to the area, or include some other objectives. New opportunities for a community may result from the increased exposure a Scenic and Historic Highway receives. This exposure can be gained in a number of ways, such as by distribution of maps and trip planning brochures or developing pre-planned itineraries for bus tour companies, installation of Scenic and Historic Highway signage or targeted advertising campaigns.

The Corridor Plan must include a signage plan covering signs in the right-of-way as well as the corridor as a whole, that demonstrates how public and private interests can work together with a coordinated strategy to make the number and placement of signs more supportive of the visitor experience. Local government officials should play an important role in developing this strategy.

- Resources Interpretation, including recommended locations for distributing information

You need to provide a description of how you plan to interpret the significant resources of the Scenic and Historic Highway. Briefly describe the stories illustrated by resources of the Scenic and Historic Highway that will serve as a basis for interpretation. You should include recommended locations for the placement of visitor centers, interpretive markers, interpretive brochure distribution points and other planned interpretive opportunities.

- Support and Implementation, including relationship to local government comprehensive plans

The continuation of the Scenic and Historic Highway over time will need a capable management entity (or sponsor group) responsible for day-to-day coordination and advocacy of the highway. The Plan should describe the management entity for the Scenic and Historic Highway.

identify the principal partners (e.g., highway departments, tourism agencies, chambers of commerce, county government, citizens groups, etc.), and include a list of their specific, individual responsibilities. The Plan should include a letter of intent (i.e., commitment) from strategic partners of support for the Scenic and Historic Highway's designation and their participation in the Plan's implementation.

Obtain a letter of intent or resolution of support by local governments (from the chief elected official or body) with jurisdiction along the roadway that indicates support for the designation and intent to incorporate the following items in local land use plans: a map that shows the Scenic and Historic Highway corridor, the corridor vision statement and the goals, objectives and strategies related to the specific local government.

List all organizations with responsibility for the implementation of the Plan and identify what those responsibilities are. Explain how the implementation will be monitored to verify that those responsibilities are being met and modified, as needed, to incorporate new participation.

- Funding Plan for implementing the Corridor Plan

Develop and include a budget that estimates the costs for implementation of the Plan over a five to ten year period.

Address the availability of financial resources needed to upgrade, protect, develop, promote and/or otherwise enhance the corridor and implement the Corridor Plan to make the Scenic and Historic Highway and its corridor available for its intended uses. Indicate funding currently in hand and funds that have been requested, and the sources for these funds. For funding that is presently not available, indicate how you plan to locate funding sources.

- Transportation and Safety, including consideration of appropriate design guidelines for Context Sensitive Design in the corridor, accommodating commercial traffic, accommodating multi-modal uses of the corridor to the extent feasible, and complying with outdoor advertising controls.

The Corridor Plan should identify the potential safety, operational and maintenance impacts of the designation based on available information, their causes, and actions possible to address them. The initial step towards accomplishing this is to contact the agency responsible for maintenance of the highway. This agency can share available information and provide expertise to identify any correctable faults in highway design, maintenance, or operation.

In addition, this agency can describe the types of transportation projects that will likely arise within the

corridor over a ten to fifteen year period. The Plan should identify these expected project types and make broad recommendations for general solutions applying the principles of Context Sensitive Design. This discussion should include an evaluation of how any proposed changes may affect the intrinsic qualities of the corridor.

The Plan should include a narrative describing strategies to accommodate commercial traffic while maintaining a safe and efficient level of highway service and ensuring the safety of sightseers in smaller vehicles, as well as bicyclists, joggers and pedestrians.

The Plan should address accommodating multi-modal uses of the corridor to the extent feasible. The corridor may be served by rail service, car ferries, airports, buses, or bicycles. It may be helpful to contact local or regional transportation planning agencies to help assess the role of all transportation facilities and services for visitor access and use of the Scenic and Historic Highway. Describe in the Corridor Plan any recommendations for improvements and changes to these services and facilities as they relate to visitor access and use of the highway.

The Corridor Plan should describe existing local, state and federal laws regarding the control of outdoor advertising and should demonstrate compliance with these laws.

- Short-Term Action Plan for implementation

The Corridor Plan should include a short-term action plan covering the first two ~~to three~~ years of implementation of the Plan. The action plan outlines the sequence of actions that the Sponsor will perform or oversee in an effort to meet the goals, objectives and strategies and, ultimately, achieve the Corridor Vision. The Plan should provide specific milestones month-by-month for implementation actions stating who is responsible for each. The action plan should include a schedule and performance measures for the continuing review of how well implementation responsibilities are being met.

#### **Chapter 4: Implementation of Corridor Plans**

##### **Is there a periodic review of the routes that have been designated?**

The Scenic and Historic Highway Sponsor is required to monitor implementation of the Corridor Plan annually, including the protection of intrinsic qualities, by providing a written status report to DelDOT's Scenic and Historic Highways Coordinator. This report should describe progress made in implementing the plan, funds secured, accomplishments achieved, and modifications made to the Corridor Plan based on evolving circumstances.

Additionally, DelDOT's staff will conduct inspections annually to ensure the stability of intrinsic qualities and the character of the corridor for which it merited designation and

to assess progress made in implementing the Corridor Plan. DeIDOT staff will prepare a written report to document their findings and send this to the Corridor Sponsor and other responsible agencies. DeIDOT staff will encourage corrective actions if necessary. DeIDOT will also submit these reports to the Scenic and Historic Highways Advisory Board.

### **Chapter 5: De-designation of Scenic and Historic Highways**

#### **Is there a de-designation process?**

A Delaware Scenic and Historic Highway may be de-designated for two reasons: first, if the corridor is designated, but a Corridor Plan is not completed in a timely manner; and second, if the corridor loses the qualities for which it was designated.

Once a Scenic and Historic Highway has been designated by the Secretary of Transportation, the sponsor group has five years from the date of designation to complete an approved Corridor Plan for the Scenic and Historic Highway. If a Plan is not completed and approved by this date, the Scenic and Historic Highway will be automatically de-designated as a State Scenic and Historic Highway.

The second condition that might result in de-designation is related to DeIDOT's annual inspection of Scenic and Historic Highways. When DeIDOT's Scenic and Historic Highways Coordinator conducts an inspection and he or she identifies such a substantial change in the quality, level, or integrity of intrinsic qualities that it appears that the corridor no longer meets the criteria for designation, the de-designation process may be initiated. This process may only begin, however, after DeIDOT has indicated its concerns to the Sponsor in written form including, if possible, a plan for remedial action to restore the qualities for which the roadway was designated, allowing a one-year period for showing progress. DeIDOT can allow more time to accomplish remedial action if necessary. If, however, no remedial action plan is agreed upon, DeIDOT will proceed with de-designation.

The de-designation process will follow generally the same process as the Corridor Plan review process. DeIDOT's Scenic and Historic Highways Coordinator will prepare information documenting how the corridor no longer meets the criteria for designation. This information will be reviewed by DeIDOT's Director of Planning and submitted with his or her recommendation to the State Scenic and Historic Highways Advisory Board for their recommendation. The Advisory Board's recommendation will be submitted to the Secretary of Transportation for a decision on de-designation.

In addition to DeIDOT's ability to initiate a de-designation inquiry, any interested party, including individuals, local governments, counties, tourism

departments, historical societies, non-profit organizations and state and federal agencies, may request in writing that DeIDOT initiate this process. This request should include documentation of the reason why the requestor believes the roadway no longer meets the criteria for designation of Scenic and Historic Highways.

Whether DeIDOT initiates an inquiry into de-designation or a member of the public requests this inquiry, public notice will be provided.

### **Chapter 6: Sources of Information to Assist Scenic & Historic Highway Sponsors**

#### **General information**

Information to assist Scenic and Historic Highway sponsors will come from a multitude of sources. With DeIDOT as the sponsor agency for the program, a Sponsor should start by contacting the DeIDOT Scenic and Historic Highways Coordinator to receive all available program information. DeIDOT staff will provide phone consultation to prospective Scenic and Historic Highway sponsors and assist with public involvement to the extent resources are available. If funding can be secured, DeIDOT will provide training in public involvement and other skills needed to develop Corridor Plans.

Many other agencies and organizations will be able to assist Sponsors as well. Foremost among these is the Federal Highway Administration (FHWA) through its publications referenced in Chapters 2 and 3, "Byway Beginnings: Understanding, Inventorying, and Evaluating a Byway's Intrinsic Qualities" and "Community Guide to Planning & Managing a Scenic Byway" and through its website at [www.byways.org](http://www.byways.org). The publications are available by calling FHWA's Scenic Byways Clearinghouse at 1-800-4byways and choosing extension #2. Other publications available include a map of National Scenic Byways and All American Roads.

Using the same 1-800-4byways phone number and choosing extension #5, a caller reaches the America's Byways Resource Center, a source of information for developing statewide scenic byways programs, and for byway sponsors seeking National Scenic Byway designation. Staff at the center are assigned to specific states, so ask for the staff person assigned to Delaware. The website includes a wealth of information for byway sponsors with the opportunity to "Ask an Expert" questions and links to many state scenic byway sites.

A list of the member organizations of Delaware's Scenic and Historic Highways Advisory Board is listed in the appendix. These groups have helped to shape the program and many have expertise that will be valuable in developing the Step 1 – Nomination Application and Step 2 – Corridor Plan Application. The FHWA publications mentioned above cite the types of information likely available in state

level organizations for resource identification, resource protection and interpretive strategies, etc. Delaware's Office of Tourism staff will be able to inform Scenic and Historic Highway sponsors of current marketing efforts and evolving themes for future marketing that sponsors may want to use as a basis for interpretive efforts.

To help with your nomination and Corridor Plan efforts, the FHWA suggests that you consider recruiting community leaders who have experience in planning and organizing projects. Their expertise in grant writing, political maneuvering, project management, conflict resolution and other related skills may prove extremely useful.

Local, state, and federal government staff can be a considerable help, particularly those who work in the fields of transportation planning, resource conservation, economic development and tourism. Also colleges and state universities are likely to have individuals who can assist the Sponsor group in technical expertise (from departments of landscape architecture, architecture, planning, historic preservation, geography, history, natural resources, recreation planning, and government, for example).

You may also want to contact state and regional chapters of professional organizations, including the American Planning Association, and the American Society of Landscape Architects, and environmental and preservation organizations like Scenic America, the Nature Conservancy, Trust for Public Land, the National Trust for Historic Preservation and Preservation Delaware.

Remember to involve business leaders in your efforts. These leaders may have limited time to spare, but if you use their time well, their ideas may be critical to the success of the overall scenic byway effort.

### **Funding**

The passionate efforts of committed volunteers along with time devoted by state and local agency staff, will go a long way toward assembling the critical mass of effort needed to prepare at Step 1 – Nomination Application and Step 2 – Corridor Plan. However, some level of funding will likely be needed to complete these efforts. Creative partnering is a good first step toward securing needed resources, both expertise and financial. Many suggestions are made in the previous section of this chapter. While some of your partners may be familiar with funding sources from government programs, others may know foundation sources interested in collaborative and positive outcomes likely from a scenic byway planning and implementation process. Still others, particularly business leaders, may know of corporate sources willing to sponsor your effort.

Once a route has received state Scenic and Historic Highway designation as a result of approval of the Step 1 – Nomination Application, it is eligible for federal funding for corridor planning from the FHWA. Federal grants are available on a competitive basis with applications due

generally about June 1 of each year. DeIDOT's Scenic and Historic Highways Coordinator will have complete information available on this funding. The [byways.org](http://byways.org) website includes a list of activities eligible for funds, listings of grants awarded in past years, and an application for future grant awards. There is a matching requirement of 20% for the federal funds awarded.

### **Cooperative efforts with neighboring states**

The nearby states of Maryland and New Jersey have particularly active scenic byways programs and are interested in byway proposals that might cross state lines. For example, the Underground Railroad, an important theme in Delaware's history, is also being interpreted as part of Maryland's Chesapeake Country Byway. You may wish to contact the state scenic byways coordinators for these states to discuss possible partnership opportunities. DeIDOT's Scenic and Historic Highways Coordinator can provide you with contact information.

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## **EXECUTIVE DEPARTMENT DELAWARE ECONOMIC DEVELOPMENT OFFICE**

Statutory Authority: 29 Delaware Code,  
Section 5005(11), (29 Del.C. §5005(11))

**Delaware Economic Development Office  
The Delaware Economic Development Authority  
Order Adopting And Promulgating Proposed  
Amendment To Regulation No. 5 – Procedures  
Governing The Delaware Strategic Fund**

### **TITLE OF REGULATION**

Regulation No. 5 – Procedures Governing the Delaware Strategic Fund.

### **ORDER ADOPTING AND PROMULGATING AMENDMENTS TO REGULATIONS**

AND NOW, this 2nd day of October, 2001, John D. Wik, as Director of the Delaware Economic Development Office ("DEDO") and as Chairperson of The Delaware Economic Development Authority ("DEDA"), in accordance with 29 Delaware Code §§ 5005(11), 5029(a) and 10118(b), for the reasons stated below enters this ORDER adopting and promulgating the amendments to Regulation No. 5 – "Procedures Governing the Delaware Strategic Fund" (the "Regulation")

**NATURE OF PROCEEDINGS; SYNOPSIS OF THE  
SUBJECT AND SUBSTANCE OF THE  
PROPOSED AMENDMENTS TO THE REGULATION**

In accordance with procedures set forth in 29 Del. C. Ch. 11, Subch. III and 29 Del. C. Ch. 101, the Director of DEDO, as Chairperson of DEDA, proposed to adopt amendments to the existing Regulation, which governs the administration and operation of the Delaware Strategic Fund Program established in 29 Del. C. §§ 5027 through 5029, as amended, to reflect certain changes in the practices of The Delaware Economic Development Authority pertaining to the Delaware Strategic Fund Program and changes to the Brownfield Assistance program under that statute that are necessitated by the enactment into law of 73 Delaware Laws, c. 183 (July 13, 2001). The proposed amendments add certain new definitions in connection with the Brownfield Assistance Program, incorporate the interagency due diligence that the staff of the Delaware Economic Development Office performs into the description of the evaluation process for assistance, eliminate certain non-profit activities from the list of ineligible projects in certain programs, remove a limitation on the amount of assistance that can be rendered with respect to certain programs and conform the Brownfield Assistance Program terms to those in the recently enacted 29 Del. C. § 5028(c).

Notice of the public hearing to consider the proposed amendments and the text of the amendments appeared in the September 1, 2001 issue of the Delaware Register of Regulations, 5 Del. R.499 – 512 (September 1, 2001), and in Delaware newspapers of general circulation on September 6, 2001 and September 10, 2001 in accordance with 29 Del. C. §10115(b). An employee of DEDO designated by the Director of DEDO in accordance with 29 Del. C. §§ 5005(10), 5053(e) and 10117(1) held the public hearing on October 1, 2001 from 5:00 until 7:00 p.m. at the offices of DEDO on the 10th floor of the Carvel State Office Building, 820 N. French Street, Wilmington, DE, 19801, as duly noticed. This is the order of the Director of DEDO in his capacity as Director and as Chairperson of DEDA adopting the proposed amendments to the Regulation.

**SUMMARY OF EVIDENCE AND INFORMATION  
SUBMITTED**

DEDO received no written comments in response to the notice of the proposed amendments to the Regulation, and no member of the public made comment on the proposed amendments to the Regulation at the public hearing on October 1, 2001.

**FINDINGS OF FACT AND CONCLUSIONS**

1. The Delaware General Assembly enacted certain

changes to the Brownfields Program within the Delaware Strategic Fund in 73 Delaware Laws, c. 183 (July 13, 2001), codified at 29 Del. C. § 5028(a)(4) and (c), that require the amendment of the Regulation so that it conforms to the statute governing the Delaware Strategic Fund.

2. In the process of evaluating applications for assistance under the Delaware Strategic Fund program, DEDO personnel have begun the practice of making inquiries of other agencies of the State of Delaware, other states and the United States about the applicant to verify assertions made in the application. The proposed amendments to the Regulation reflect this recently developed practice.

3. Based on its experience with the Delaware Strategic Fund Program, DEDA has determined that it should amend certain restrictions imposed by the Regulation. Thus, the proposed amendments to the Regulation alter the maximum amount of certain types of assistance, broaden the uses to which certain types of assistance may be put, eliminate certain percentage limitations on the amount of assistance available under various subprograms of the Delaware Strategic Fund and eliminate the ineligibility for assistance of certain non-profit activities and entities.

4. Certain changes and language in the Regulation proposed in the version of the Regulation sent to the Register of Regulations were not reproduced in the Regulation, as published in 5 Del. R. 499 – 512, and those changes are reflected in the text of the final regulation that follows.

5. The proposed amendments to the Regulation are necessary to conform the Regulation to its underlying statute and to reflect present DEDA practice in the administration of the Delaware Strategic Fund Program.

6. The Director of DEDO, in his capacity as Director and as Chairperson of DEDA, has statutory authority to promulgate regulations pursuant to 29 Del. C. §§ 5005(11) and 5029(a).

**DECISION AND ORDER CONCERNING  
AMENDMENTS TO THE REGULATION**

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Director of DEDO, in his capacity as Director and as Chairperson of DEDA, ORDERS that the amendments to the Regulation be, and that they hereby are, adopted and promulgated as set forth below. The effective date of this Order is ten days from the date of its publication in the Delaware Register of Regulations, in accordance with 29 Del. C. § 10118(g).

John D. Wik, Director, Delaware Economic Development Office and Chairperson, The Delaware Economic Development Authority

**TEXT OF THE REGULATION, AS AMENDED**

**1.0 ENABLING LEGISLATION**

1.1 Pursuant to 29 **Del.C.** §§ 5027-5029 (the “Act”), as amended, the Delaware Strategic Fund (the “Fund”) was established. The Fund was created to assist the Delaware Economic Development Office (the “Office”) through The Delaware Economic Development Authority (the “Authority”) with efficiently administering financing programs as well as with developing new programs to retain, attract and expand Delaware employment. Section 5029(a) of the Act directs the Authority to draft rules and regulations pertaining to Fund eligibility. The following regulations (the “Regulations”) have been adopted by the Authority pursuant to the foregoing provision of the Act. 29 Del.C. § 5005(11) also gives the Director of the Office general power to promulgate rules and regulations governing the Office.

**2.0 PURPOSE**

2.1 The purpose of these Regulations is to establish criteria for the administration of the Fund. The Regulations contain procedures governing the process for applying to the Authority for economic assistance under the Fund, pre-closing and post-closing procedures and criteria for the Authority’s approval or disapproval of an application for economic assistance under the Fund.

**3.0 DEFINITIONS**

Unless otherwise indicated below, all capitalized terms used herein shall have the meaning ascribed to such terms in 29 **Del.C.** § 5052.

The terms defined in 1.0 of this Regulation shall have the meanings ascribed to such terms therein.

The following words and terms, unless the context clearly indicates a different meaning, shall have the following respective meanings:

“**Application**” means an application made to the Authority on such form or forms, together with all relevant attachments, as the Authority may, in its sole discretion, require in connection with administration of the Fund.

“**Applicant**” means any person, including individuals, firms, partnerships, associations, societies, trusts, public or private corporations, not for profit corporations or other legal entities, including public or governmental bodies as well as natural persons for which a Project is undertaken or proposed to be undertaken.

“**Award**” shall have the meaning ascribed to such term in 18.0 hereof.

“**Brownfield**” means any vacant, abandoned or underutilized real property, the development or redevelopment of which may be hindered by the reasonably held belief that the real property may be environmentally contaminated.

“**Brownfield Assistance**” shall have the meaning

ascribed to such term in 19.0 hereof.

“**Certified Brownfield**” means a Brownfield that the Secretary of the Department of Natural Resources and Environmental Control has certified as a Brownfield pursuant to the regulations promulgated under 7 **Del.C.** §9104(b)(2)p.

~~Chairman~~ “**Chairperson**” means the ~~Chairman~~ Chairperson of the Authority.

“**Council**” means the Council on Development Finance created by 29 **Del. C.** §5007.

“**Development Assistance**” shall have the meaning ascribed to such term in 15.0 hereof.

~~“Director” means the Director of the Delaware Economic Development Office.~~

“**Eligible Project**” shall have the meaning ascribed to such term in 19.0 hereof.

“**Final Approval**” means the final approval of an Application by the ~~Chairman~~ Chairperson.

“**Financial Assistance**” shall have the meaning ascribed to such term in 17.0 hereof.

“**GII Loan**” shall have the meaning ascribed to such term in 11.0 hereof.

“**Green Industries Initiative**” means the program created by the memorandum of understanding between the Delaware Development Office, predecessor in interest to the ~~Delaware Economic Development Office~~, and the Department of Natural Resources and Environmental Control dated December 2, 1991.

“**Loan**” shall have the meaning ascribed to such term in 10.0 hereof.

“**Participation**” shall have the meaning ascribed to such term in 9.0 hereof.

“**Program**” shall have the meaning ascribed to such term in 18.0 hereof.

“**Relocation Assistance**” shall have the meaning ascribed to such term in 16.0 hereof.

“**SBIR**” shall have the meaning ascribed to such term in 18.0 hereof.

**4.0 FEES**

4.1 Application Fees

4.1.1 A non-refundable fee of two hundred fifty dollars (\$250) shall accompany every Application before such Application shall be considered by the Authority. The fee shall be in the form of a check made payable to “The Delaware Economic Development Authority.”

4.2 Closing Fees

4.2.1 For loans or participations in any amount up to and including one hundred thousand dollars (\$100,000), a fee of one half percent (.5%) of the loaned amount shall be paid at closing.

4.2.2 For loans or participations excess of one hundred thousand dollars (\$100,000) up to and including two hundred twenty five thousand dollars (\$225,000), a fee

of one percent (1%) of the loaned amount shall be paid at closing.

4.2.3 For loans or participations in excess of two hundred twenty five thousand dollars (\$225,000), a fee of one and one half percent (1.5%) of the loaned amount shall be paid at closing.

4.2.4 The Application fee shall be credited toward the closing fee required to be paid under 4.2. In no event shall the closing fee and the Application fee total less than two hundred fifty dollars (\$250).

#### 4.3 Post Closing Fees

4.3.1 Any fees or costs incurred by the Authority in connection with executing a document or granting a consent or waiver related to a Project after closing, including, without limitation, attorney fees, shall be paid by the Applicant.

4.3.2 Any fees or costs incurred by the Authority for modifying or restructuring payment terms for financial assistance after closing, shall be paid by the Applicant.

4.3.3 Closing documentation for all Projects shall contain the Applicant's covenant to pay the fees and costs described in 4.3.1 and 4.3.2.

#### 4.4 Waiver of Fees

4.4.1 The foregoing fees shall, unless otherwise waived by the Authority in its sole discretion, be paid with respect to all financial assistance granted by the Authority.

### 5.0 LOAN TERMS

#### 5.1 Interest Rate

5.1.1 The interest rate on a direct loan with a term up to and including one hundred twenty (120) months shall be sixty percent (60%) of the prime rate published in *The Wall Street Journal*.

5.1.2 The interest rate on a direct loan with a term of more than one hundred twenty (120) months shall be seventy percent (70%) of the prime rate published in *The Wall Street Journal*.

5.1.3 The interest rate on a participation loan with a term up to and including one hundred twenty (120) months shall be sixty percent (60%) of the participating bank's commercial rate.

5.1.4 The interest rate on a participation loan with a term of more than one hundred twenty (120) months shall be seventy percent (70%) of the participating bank's commercial rate.

#### 5.2 Maturity

5.2.1 Loans for which the proceeds are used for working capital purposes shall not have a maturity of greater than five (5) years.

5.2.2 Loans for which the proceeds are used for purposes other than working capital and the purchase or renovation of real estate shall not have a maturity of greater than ten (10) years.

5.2.3 Loans for which the proceeds are used to

purchase or renovate real estate shall not have a maturity greater than twenty (20) years.

#### 5.3 Repayment

5.3.1 Loans will be amortized and repaid to the Authority on a monthly basis. Any amortization of Loan repayment other than monthly principal and interest shall be at the sole discretion of the Authority.

5.3.2 Participations will be amortized to mirror those of the financial institution from which the Participation was purchased.

### 6.0 APPLICATION PROCEDURE

6.1 Before submitting an Application, the Applicant should consult with the Authority to determine if the Project is eligible for consideration.

6.2 To apply for financial assistance, an Applicant must submit a completed Application concerning the Project to the Authority for review, together with the non-refundable Application fee. No application will be reviewed by the Authority until it is complete to the satisfaction of the Authority.

6.3 Applicants may obtain Application forms by contacting the Director of Financial Programs, Delaware Economic Development Office, 99 Kings Highway, Dover, DE 19901. Phone (302) 739-4271 / Fax (302) 739-5749.

### 7.0 EVALUATION PROCESS

7.1 When an Application is complete to the satisfaction of the Authority, the Authority will evaluate the Project, which evaluation may be based on the following:

7.1.1 Visitation to the Applicant's place of business, which may take place prior to the Application as a part of the meeting to determine eligibility.

7.1.2 Analysis of historical and projected financial statements and a comparison to industry peers.

7.1.3 An independent industry study (using source material such as RMA Annual Statement Studies), comparing the Applicant's projections to the study, and considering the short term and long term outlook for the industry.

7.1.4 Contact with the Applicant's customers to ascertain the quality of the product or service provided, the competitiveness of the pricing, reliability and timelines of delivery, length of the relationship, likelihood of the relationship being continued, and customer's opinions of the Applicant's management.

7.1.5 Contact with the Applicant's suppliers to ascertain the length of the relationship, the amount of credit extended, the amount of purchases, payment history, the likelihood of the relationship being continued, and possibly an opinion of Applicant's management.

7.1.6 Contact with the Applicant's bank(s) to ascertain credit history and obtain an opinion of the Applicant's management.

7.1.7 An analysis of collateral available to secure any requested financing as to adequacy of amount, quality, condition, and marketability.

7.1.8 Independent credit investigations of the Applicant and its principals, which may include judgment and lien searches.

7.1.9 Independent inquiries about the Applicant and its principals with other agencies of the State, other states, or the United States.

7.2 After completing the evaluation, a determination shall be made regarding the merits of the request, the adequacy of the collateral available to secure the requested financing, if applicable, and, if applicable, the likelihood of repayment.

7.3 If a positive determination is made, the requested financing will be presented to the ~~Chairman~~ Chairperson for preliminary approval.

## **8.0 APPROVAL PROCESS**

8.1 The Authority shall use its reasonable best efforts to complete its review of the Application and to forward the Application to the ~~Chairman~~ Chairperson for preliminary approval or disapproval within sixty (60) days from the date it deems an Application complete.

8.2 Upon preliminary approval by the ~~Chairman~~ Chairperson, an Application shall be submitted to the Council for review, and the Council shall make a recommendation with respect to the Application.

8.3 If the ~~Chairman~~ Chairperson of the Authority determines that a Project has substantial economic development content, is in the public interest, and that the Authority's financial support would represent a prudent use of State funds, consistent with the Act, then the ~~Chairman~~ Chairperson may recommend financial assistance for such Project to the Council which exceeds any dollar limitations, conditions to, or restrictions on, assistance contained in these Regulations.

8.4 Upon recommendation by the Council, the Application shall be submitted to the ~~Chairman~~ Chairperson for consideration and final approval or disapproval.

8.5 Final Approval shall constitute official action on the part of the Authority demonstrating its intent to adopt a resolution authorizing the issuance of the requested financial assistance. Final Approval will be binding on the Authority *provided, however*, that the Authority may withdraw Final Approval at any time prior to the ~~Closing Date~~ disbursement of financial assistance, if it determines that (1) the Applicant's circumstances have changed adversely since the date of Final Approval or since completion of the Application, if such adverse change did not come to the Authority's attention prior to Final Approval or (2) the Application contained a statement that was materially false or failed to include information necessary to prevent the Application from being materially false.

8.6 Final Approval will be effective for a period not to exceed one (1) year, and all funds committed for a Project must be completely dispersed by the Authority within that time. The Authority, in its sole discretion, may make limitations or grant extensions with respect to this one-year period.

8.7 The Applicant shall be issued a commitment letter outlining the terms and conditions of the Final Approval. When the commitment letter has been accepted by the Applicant and returned to the Authority together with any required fees, and all required documentation is prepared in form and content satisfactory to the Authority, a closing is scheduled and financial assistance is made available to the Applicant.

## **9.0 PARTICIPATION LOAN PROGRAM**

### **9.1 Program Description**

9.1.1 The Authority is empowered to purchase participations from financial institutions that are approved by the Authority (a "Participation"). A Participation shall be no more than thirty percent (30%) of the eligible bank debt with respect to a Project. The Authority may, in its sole discretion, limit the amount of its Participation in any Project to any amount less than thirty percent (30%).

9.1.2 The maximum amount of a Participation ordinarily shall be four hundred fifty thousand dollars (\$450,000), and the minimum amount shall be thirty thousand dollars (\$30,000).

9.1.3 Proceeds of Participations can be used for any Project, subject to **9.2.2** below.

9.1.4 The maximum term of a Participation shall be twenty (20) years and the minimum term shall be two (2) years. The actual term will be based on usage of the proceeds and will mirror the term of the underlying loan.

### **9.2 Eligibility Standards**

9.2.1 To be eligible for a Participation, a Project should serve a public purpose by maintaining or expanding full-time employment in the State, maintaining or diversifying business and industry in the State, and/or maintaining or increasing its tax base. Also, the Applicant must be able to demonstrate to the satisfaction of the Authority that financial assistance from the State is necessary to effectuate the outcome of the Project.

9.2.2 The following projects do not qualify for a Participation:

9.2.2.1 Private speculative real estate ventures;  
9.2.2.2 Projects which do not attract or retain employment opportunities;

9.2.2.3 Restaurants and professional office buildings;

9.2.2.4 Refinancing of existing debt; and,

9.2.2.5 Funding projects located outside the

State, and

~~9.2.2.6 Private, non-profit activities except~~

~~those which assist in the financing of medical facilities, nursing facilities for the residence care of the aged in order to provide modern and efficient medical and nursing care and residence facilities for the citizens of the State.~~

### 9.3 Project Approval Standards

9.3.1 Findings. - As a precondition to approving a Participation, the Authority shall make the findings and determinations required by 29 Del. C. §5055 with respect to the Applicant and the Project. The Authority shall apply the following standards, where applicable, in making such findings and determinations:

9.3.1.1 Employment Standard. - The Authority will review information concerning the Applicant as submitted in an Application or as otherwise available to the Authority through independent investigation. As a condition precedent to purchasing a Participation, the Authority shall determine that the Applicant intends to maintain and/or is capable of maintaining or providing gainful employment within the State. The standards to be considered by the Authority will include, but not be limited to, the number of permanent, quality, full-time jobs created or retained as a result of the Project, the wage scale applicable to persons to be employed as a result of the Project, the economic situation in the State at the time of filing of the Application, the effect of the Project on the tax base of the State or of the county or municipality in which the Project is to be located, and the expected impact that the Project will have on the development of new or expanded economic activity within the State.

9.3.1.2 Abandonment Standard. - When applying the "employment standard" set forth in **9.3.1.1** above, the Authority shall take into consideration whether the Project will cause or result in unnecessary abandonment of an existing facility elsewhere in the State by the Applicant. The Authority, in its sole discretion, may disapprove a Participation for a Project involving relocation within the State if the relocation will result in a job loss and/or hardship for existing employees or abandonment.

9.3.1.3 Capability Standard; Adherence to Law. In determining whether the Project will assist in creating or retaining "direct, permanent, quality full-time jobs" in the State, the Applicant shall demonstrate to the Authority that the Applicant, operator or principal user thereof has the capability to operate and maintain such Project efficiently and that the Applicant has not been convicted of a major labor law violation or of a violation involving moral turpitude by any agency or court of the federal government or agency or court of any state in the 2-year period immediately prior to the approval of the Applicant's Application. In this regard, the Authority may, in its sole discretion, rely on a sworn affidavit of the Applicant or an officer of the Applicant or an opinion of counsel of the Applicant to such effect. If an Applicant has been convicted of such a violation, the Authority, in its sole

discretion, may decline to consider the Application. If requested by the Authority, similar proof shall be obtained from any operator or principal user of the Project.

9.3.1.4 Prior Lending Commitment. - Prior to Final Approval the Applicant must provide a written commitment from a bank or other recognized lending institution evidencing its commitment to lend to the Applicant the required portion of the bank debt necessary to complete the proposed Project.

9.3.2 Collateral Provisions. - The Participation shall be collateralized to the satisfaction of the Authority which shall use standard underwriting procedures to determine such collateralization. In the case of a privately held company, personal guarantees from active owners (whose ownership is 20% or greater) will normally be required.

9.3.3 Mandatory Provisions in Closing Documents. - The closing documents for a Participation shall state that, if applicable, the participating financial institution will provide evidence to the Authority that the Applicant maintains property insurance policies on any collateral. The Authority shall be listed as loss payee, as its interests may appear, and the participating financial institution will provide evidence to the Authority that the Applicant maintains public liability insurance naming the Authority as an additional insured, as its interests may appear.

9.3.4 Post-Loan Period - Annual Reporting. - Unless waived or amended by the Authority in its sole discretion, the Applicant shall, for a period of five (5) years following the funding of a Participation, submit to the Authority, on an annual basis, financial statements in a form acceptable to the Authority, a progress report on the status of the Project, including, but not limited to, the number of permanent, quality, full-time jobs created or saved as a result of the Project and the wage scale applicable to such persons, any economic impact of the funding (such as sales, costs, etc.) and any other information required by the Authority. Each Applicant shall report to the Authority no later than August 31 of each of the years for which the report is required.

## 10.0 DIRECT LOAN PROGRAM

### 10.1 Program Description

10.1.1 The Authority is empowered to make direct loans to Applicants (a "Loan"). ~~The maximum amount of a Loan shall be thirty percent (30%) of the eligible bank debt with respect to a Project. The Authority may, in its sole discretion, limit the amount of its Loan in any Project to any amount less than thirty percent (30%).~~

10.1.2 The maximum amount of a Loan ordinarily shall be four hundred fifty thousand dollars (\$450,000), and the minimum amount shall be thirty thousand dollars (\$30,000).

10.1.3 Proceeds of a Loan can be used for, but are

not limited to, the acquisition of land, buildings, machinery and equipment, the expansion of an existing building, or the renovation of machinery, equipment, and buildings. Proceeds can also be used to augment working capital.

10.1.4 The maximum term of a Loan shall be twenty (20) years and the minimum term shall be two (2) years. The actual term of the Loan will be based on usage of the proceeds.

**10.2 Eligibility Standards**

10.2.1 To be eligible for a Loan, a Project should serve a public purpose by maintaining or expanding employment in the State, by maintaining or diversifying business and industry in the State, and/or by maintaining or increasing its tax base. Also, the Applicant must be able to demonstrate to the satisfaction of the Authority that financial assistance from the State is necessary to effectuate the outcome of the Project.

10.2.2 The following projects do not qualify for a Loan:

10.2.2.1 Private speculative real estate ventures;

10.2.2.2 Projects which do not attract or retain employment opportunities;

10.2.2.3 Restaurants and professional office buildings;

10.2.2.4 Refinancing of existing debt; and,

10.2.2.5 Funding projects located outside the State, and

~~10.2.2.6 Private, non-profit activities except those which assist in the financing of medical facilities, nursing facilities for the residence care of the aged in order to provide modern and efficient medical and nursing care and residence facilities for the citizens of the State.~~

**10.3 Project Approval Standards**

10.3.1 Findings. - As a precondition to approving a Loan, the Authority shall make the findings and determinations required by 29 Del.C. § 5055 with respect to the Applicant and the Project. The Authority shall apply the following standards, where applicable, in making such findings and determinations:

10.3.1.1 Employment Standard. - The Authority will review information concerning the Applicant as submitted in an Application or as otherwise available to the Authority through independent investigation. As a condition precedent to making a Loan, the Authority shall determine that the Applicant intends to maintain and/or is capable of maintaining or providing gainful employment within the State. The standards to be considered by the Authority will include, but not be limited to, the number of permanent, quality, full-time jobs created or retained as a result of the Project, the wage scale applicable to persons to be employed as a result of the Project, the economic situation in the State at the time of filing of the Application, the effect of the Project on the tax base of the State or of the

county or municipality in which the Project is to be located, and the expected impact that the Project will have on the development of new or expanded economic activity within the State.

10.3.1.2 Abandonment Standard. - When applying the “employment standard” set forth in 10.3.1.1. above, the Authority shall take into consideration whether the Project will cause or result in unnecessary abandonment of an existing facility elsewhere in the State by the Applicant. The Authority, in its sole discretion, may disapprove a Loan in a Project involving relocation within the State if the relocation will result in a job loss and/or hardship for existing employees or abandonment.

10.3.1.3 Capability Standard; Adherence to Law. In determining whether the Project will assist in creating or retaining “direct, permanent, quality full-time jobs” in the State, the Applicant shall demonstrate to the Authority that the Applicant, operator or principal user thereof has the capability to operate and maintain such Project efficiently and that the Applicant has not been convicted of a major labor law violation or of a violation involving moral turpitude by any agency or court of the federal government or agency or court of any state in the 2-year period immediately prior to the approval of the Applicant’s Application. In this regard, the Authority may, in its discretion, rely on a sworn affidavit of the Applicant or an officer of the Applicant or an opinion of counsel of the Applicant to such effect. If an Applicant has been convicted of such a violation, the Authority, in its sole discretion, may decline to consider the Application. If requested by the Authority, similar proof shall be obtained from any operator or principal user of the Project.

~~10.3.1.4 Prior Lending Commitment. - Prior to Final Approval the Applicant must provide a written commitment from a bank or other recognized lending institution evidencing its commitment to lend to the Applicant the required portion of the bank debt necessary to complete the proposed Project.~~

10.3.2 Collateral Provisions. - The Loan shall be collateralized to the satisfaction of the Authority which shall use standard underwriting procedures to determine such collateralization. In the case of a privately held company, personal guarantees from active owners (whose ownership is 20% or greater) will normally be required.

10.3.3 Mandatory Provisions in Closing Documents. - The closing documents for a Loan shall state that, if applicable, the Applicant will provide evidence to the Authority that the Applicant maintains property insurance policies on any collateral with the Authority listed as loss payee, as its interests may appear, and public liability insurance policies with the Authority listed as an additional insured, as its interests may appear.

10.3.4 Post-Loan Period - Annual Reporting. - Unless waived or amended by the Authority in its sole

discretion, the Applicant shall, for a period of five (5) years following the funding of a Loan, submit to the Authority, on an annual basis, financial statements in a form acceptable to the Authority, a progress report on the status of the Project, including, but not limited to, the number of permanent, quality, full-time jobs created or saved as a result of the Project and the wage scale applicable to such persons, any economic impact of the funding (such as sales, costs, etc.) and any other information required by the Authority. Each Applicant shall report to the Authority no later than August 31 of each of the years for which the report is required.

## 11.0 GREEN INDUSTRIES LOAN PROGRAM

### 11.1 Program Description

11.1.1 The Authority is empowered to make loans to Applicants who have been approved for eligibility under the Green Industries Initiative (a "GII Loan"). The maximum amount of a GII Loan by the Authority shall be thirty percent (30%) of the eligible bank debt with respect to a Project. The Authority may, in its sole discretion, limit the amount of its GII Loan in any Project to any amount less than thirty percent (30%).

11.1.2 The maximum amount of a GII Loan ordinarily shall be four hundred fifty thousand dollars (\$450,000), and the minimum amount shall be thirty thousand dollars (\$30,000).

11.1.3 Proceeds of a GII Loan can be used for projects including, but not limited to, the acquisition of land, buildings, machinery and equipment, the expansion of an existing building, or the renovation of machinery, equipment, and buildings. Proceeds can also be used to augment working capital. Proceeds shall not be used for vehicles or other equipment that may be classified as "rolling stock."

11.1.4 The maximum term of a GII Loan shall be twenty (20) years and the minimum term shall be two (2) years. The actual term of the GII Loan will be based on usage of the proceeds.

11.1.5 GII Loans may also be made through Participations. The term of a GII Participation will mirror the underlying loan from the financial institution.

### 11.2 Eligibility Standards

11.2.1 To be eligible for a GII Loan, a Project should serve a public purpose by demonstrating the reduction, abatement, or prevention of pollution of the state's environment or protecting its natural resources.

11.2.2 The following projects do not qualify for a GII Loan:

11.2.2.1 Projects for which the Applicant has not been approved for the Green Industries Initiative;

11.2.2.2 Projects which do not demonstrate the reduction, abatement, or prevention of pollution of the State's environment or the protection of its natural resources;

11.2.2.3 Refinancing of existing debt;

11.2.2.4 Speculative ventures;

11.2.2.5 Funding projects located outside the State; and

11.2.2.6 Private, non-profit activities.

### 11.3 Project Approval Standards

11.3.1 Findings. - As a precondition to approving a GII Loan, the Authority shall make the findings and determinations required by 29 Del. C. §5055 with respect to the Applicant and the Project. The Authority shall apply the following standards, where applicable, in making such findings and determinations:

11.3.1.1 Pollution Control Standard. - The Authority will review information concerning the Applicant as submitted in an Application or as otherwise available to the Authority through independent investigation. As a condition precedent to making a GII Loan, the Authority shall determine that the Applicant intends to maintain and/or is capable of maintaining or providing for the control, abatement, or prevention of land, water, or general environmental pollution within the State. The standards to be considered by the Authority will include, but not be limited to, the environmental situation in the State at the time of filing of the Application, the effect of the Project on the State or of the county or municipality in which the Project is to be located, and the expected impact that the Project will have on the development of new or expanded economic activity within the State.

11.3.1.2 Abandonment Standard. - When applying the "Pollution Control Standard" set forth in **11.3.1.1** above, the Authority shall take into consideration whether the Project will cause or result in unnecessary abandonment of an existing facility elsewhere in the State by the Applicant. The Authority, in its sole discretion, may disapprove a GII Loan in a Project involving relocation within the State if the relocation will result in a job loss and/or hardship for existing employees or abandonment.

11.3.1.3 Capability Standard; Adherence to Law. In determining whether the Project will assist in the reduction, abatement, or prevention of pollution of the State's environment or whether it will protect the State's natural resources, the Applicant shall demonstrate to the Authority that the Applicant, operator or principal user thereof has the capability to operate and maintain such Project efficiently and that the Applicant has not been convicted of a major labor law violation or of a violation involving moral turpitude by any agency or court of the federal government or agency or court of any state in the 2-year period immediately prior to the approval of the Applicant's Application. In this regard, the Authority may, in its discretion, rely on a sworn affidavit of the Applicant or an officer of the Applicant or an opinion of counsel of the Applicant to such effect. If an Applicant has been convicted of such a violation, the Authority, in its sole discretion, may decline to consider the Application. If requested by the

Authority, similar proof shall be obtained from any operator or principal user of the Project.

11.3.1.4 Prior Lending Commitment. - Prior to Final Approval the Applicant must provide a written commitment from a bank or other recognized lending institution evidencing its commitment to lend to the Applicant the required portion of the bank debt necessary to complete the proposed Project.

11.3.2 Collateral Provisions. - The GII Loan shall be collateralized to the satisfaction of the Authority which shall use standard underwriting procedures to determine such collateralization. In the case of a privately held company, personal guarantees from active owners (whose ownership is 20% or greater) will normally be required.

11.3.3 Mandatory Provisions in Closing Documents. - The closing documents for a GII Loan shall state that, if applicable, the Applicant will provide evidence to the Authority that the Applicant maintains property insurance policies on any collateral with the Authority listed as loss payee, as its interests may appear, as well as public liability policies with the Authority listed as additional insured, as its interests may appear.

11.3.4 Post-Loan Period - Annual Reporting. - Unless waived or amended by the Authority in its sole discretion, the Applicant shall, for a period of five (5) years following the funding of a GII Loan, submit to the Authority, on an annual basis, financial statements in a form acceptable to the Authority, a progress report on the status of the Project, including, but not limited to, the number of permanent, quality, full-time jobs created or saved as a result of the Project and the wage scale applicable to such persons, any economic impact of the funding (such as sales, costs, etc.) and any other information required by the Authority. Each Applicant shall report to the Authority no later than August 31 of each of the years for which the report is required.

## **12.0 RESERVED FOR FUTURE USE.**

## **13.0 RESERVED FOR FUTURE USE.**

## **14.0 RESERVED FOR FUTURE USE.**

## **15.0 DEVELOPMENT INCENTIVE ASSISTANCE**

### **15.1 Program Description**

15.1.1 The Authority is empowered to make financial assistance in the form of grants to Applicants ("Development Assistance"). ~~The maximum amount of Development Assistance by the Authority shall be thirty percent (30%) of the project costs with respect to a Project. The Authority may, in its sole discretion, limit the amount of Development Assistance in any Project to any amount less than thirty percent (30%).~~

15.1.2 The maximum amount of Development

Assistance with respect to a Project ordinarily shall be four hundred fifty thousand dollars (\$450,000), and the minimum amount shall be thirty thousand dollars (\$30,000).

### **15.2 Eligibility Standards**

15.2.1 To be eligible for Development Assistance, a Project should serve a public purpose by maintaining or expanding employment in the State, maintaining or diversifying business and industry in the State, and/or maintaining or increasing its tax base. Development Assistance may be used for the following activities: the acquisition of land, buildings, machinery and equipment, the expansion of an existing building, or the renovation or reconstruction of machinery, equipment, and buildings.

~~15.2.1.1 Renovation, construction, or any other type of improvements to roads, and utilities related to infrastructure; and~~

~~15.2.1.2 Assistance for land and building acquisition and development related to infrastructure.~~

15.2.2 The following projects do not qualify for Development Assistance:

15.2.2.1 Private speculative real estate ventures;

15.2.2.2 Projects which do not attract or retain employment opportunities;

15.2.2.3 Restaurants and professional office buildings;

15.2.2.4 Refinancing of existing debt; and

15.2.2.5 Funding projects located outside the State; and

~~15.2.2.6 Private, non-profit activities except those which assist in the financing of medical facilities, nursing facilities for the residence care of the aged in order to provide modern and efficient medical and nursing care and residence facilities for the citizens of the State; and~~

~~15.2.2.7 Equipment other than that which is directly infrastructure related to the funded activity.~~

### **15.3 Project Approval Standards**

15.3.1 Findings. - As a precondition to approving Development Assistance, the Authority shall make the findings and determinations required by 29 Del. C. § 5055 with respect to the Applicant and the Project. The Authority shall apply the following standards, where applicable, in making such findings and determinations:

15.3.1.1 Employment Standard. - The Authority will review information concerning the Applicant as submitted in an Application or as otherwise available to the Authority through independent investigation. As a condition precedent to making Development Assistance, the Authority shall determine that the Applicant intends to maintain and/or is capable of maintaining or providing gainful employment within the State. The standards to be considered by the Authority will include, but not be limited to, the number of permanent, quality, full-time jobs created or retained as a result of the Project, the wage scale

applicable to persons to be employed as a result of the Project, the economic situation in the State at the time of filing of the Application, the effect of the Project on the tax base of the State or of the county or municipality in which the Project is to be located, and the expected impact that the Project will have on the development of new or expanded economic activity within the State.

15.3.1.2 Abandonment Standard. - When applying the "employment standard" set forth in **15.3.1.1** above, the Authority shall take into consideration whether the Project will cause or result in unnecessary abandonment of an existing facility elsewhere in the State by the Applicant. The Authority, in its sole discretion, may disapprove Development Assistance for a Project involving relocation within the State if the relocation will result in a job loss and/or hardship for existing employees or abandonment.

15.3.1.3 Capability Standard; Adherence to Law. - In determining whether the Project will assist in creating or retaining "direct, permanent, quality full-time jobs" in the State, the Applicant shall demonstrate to the Authority that the Applicant, operator or principal user thereof has the capability to operate and maintain such Project efficiently and that the Applicant has not been convicted of a major labor law violation or of a violation involving moral turpitude by any agency or court of the federal government or agency or court of any state in the 2-year period immediately prior to the approval of the Applicant's Application. In this regard, the Authority may, in its discretion, rely on a sworn affidavit of the Applicant or an officer of the Applicant or an opinion of counsel of the Applicant to such effect. If an Applicant has been convicted of such a violation, the Authority, in its sole discretion, may decline to consider the Application. If requested by the Authority, similar proof shall be obtained from any operator or principal user of the Project.

15.3.1.4 Business Standard. - In making findings and determinations with respect to the capital investment in a Project, the Authority will consider capital investment made and to be made in the proposed Project. If the Project involves an Agricultural Business or a Commercial Business, as those terms are defined in the Act, the Project must require a capital investment of at least ten thousand dollars (\$10,000), which funds, including the amount of Development Assistance will be available or expended on the date that the Authority provides such during a period of time commencing one (1) year prior to the date on which an application for Development Assistance is submitted to the Authority and terminating one year following the making of a grant with respect thereto. The Applicant must provide at least a One Hundred Thousand Dollar (\$100,000) capital investment in and/or secure at least One Hundred Thousand Dollars (\$100,000) of capital leases for buildings and/or equipment in the State. The term

"capital investment" shall be applied in accordance with generally accepted accounting principles.

15.3.1.5 Operator and User Standard. - An Applicant shall, if requested by the Authority or required in the Application, submit such information as is requested or required for each proposed operator or principal user of the Project. The Authority shall apply the same standards with respect to the operators and principal users of the Project as are applied to the Applicants, unless there is good reason, established by the Applicant, to make the findings and determinations with respect to the Applicant alone. The financial strength of the Applicant and capacity to manage or operate the Project, among other considerations, may be the basis for omitting such findings and determinations with respect to the operators or principal users.

15.3.2 Clawback Provision. - The Authority shall determine, in its sole discretion, appropriate clawback provisions for each Applicant under which the Applicant may be required to repay some or all of the Development Assistance granted under this section 15.

15.3.3 Post-Grant Period - Annual Reporting - Unless waived or amended by the Authority in its sole discretion, the Applicant shall, for a period of five (5) years following the award of Development Assistance under the Program, submit to the Authority, on an annual basis, financial statements in a form acceptable to the Authority, a progress report on the status of the Project, including, but not limited to, the number of permanent, quality, full-time jobs created or saved as a result of the Project and the wage scale applicable to such persons, any economic impact of the funding (such as sales, costs, etc.) and any other information required by the Authority. Each Applicant shall report to the Authority no later than August 31 of each of the years for which the report is required.

## 16.0 RELOCATION ASSISTANCE

### 16.1 Program Description

16.1.1 The Authority is empowered to provide financial assistance to businesses to offset some of the expenses associated with physically relocating personnel and/or equipment related to the establishment of their Delaware operation ("Relocation Assistance"). ~~Relocation expenses will be based on a formula of up to a maximum of five thousand dollars (\$5,000) for each new full-time permanent Delaware job created.~~

16.1.2 The maximum amount of Relocation Assistance ordinarily shall be assistance with respect to a Project shall be five hundred four hundred fifty thousand dollars (\$500,000) (\$450,000), and the minimum amount shall be thirty thousand dollars (\$30,000).

### 16.2 Eligibility Standards

16.2.1 To be eligible for Relocation Assistance, a Project must serve a public purpose by creating new employment in the State, and should be from targeted

industries which include manufacturers, wholesalers, laboratories, data processing, engineering, financial services (except banks subject to bank franchise tax), or administration and/or provide a minimum of 25 new jobs by either transferring out-of-state employees to new residences in the State or by attracting new employees for the Delaware operation.

16.2.1.1 The following criteria are used to determine eligibility:

16.2.1.1.1 A company not presently in the State relocates to the State.

16.2.1.1.2 A distinct division, subsidiary, or company with an existing Delaware presence that relocates additional operations to the State.

16.2.1.1.3 A significant expansion of an existing Delaware operation by relocating new and distinct operations not currently being done in the State, but previously done out-of-state that:

16.2.1.1.3.1 increases permanent full-time employment over their current Delaware base;

16.2.1.1.3.2 demonstrates that new and distinct operations being relocated are added to the existing Delaware operation.

16.2.1.1.4 The assistance provided should be a critical element in the relocation decision.

16.2.2 Applicant for Relocation Assistance shall provide for substantiation of eligibility before funding of a Project will occur.

16.2.2.1 The following criteria are used to determine substantiation:

16.2.2.1.1 Machinery & Equipment - The Applicant must provide actual receipts of expenses associated with the physical relocation and installation of equipment from a previous location to the State. (The purchase and installation of new equipment is not eligible).

16.2.2.1.2 Personnel - The Applicant shall provide evidence of the physical relocation of those employees which have moved and established a new residence in the State.

**16.3 Project Approval Standards**

16.3.1 Findings. - As a precondition to approving Relocation Assistance, the Authority shall make the findings and determinations required by 29 Del.C. § 5055 with respect to the Applicant and the Project. The Authority shall apply the following standards, where applicable, in making such findings and determinations:

16.3.1.1 Employment Standard. - The Authority will review information concerning the Applicant as submitted in an Application or as otherwise available to the Authority through independent investigation. As a condition precedent to making Relocation Assistance, the Authority shall determine that the Applicant intends to maintain and/or is capable of maintaining or providing gainful employment within the State. The standards to be

considered by the Authority will include, but not be limited to, the number of permanent, quality, full-time jobs created or retained as a result of the Project, the wage scale applicable to persons to be employed as a result of the Project, the economic situation in the State at the time of filing of the Application, the effect of the Project on the tax base of the State or of the county or municipality in which the Project is to be located, and the expected impact that the Project will have on the development of new or expanded economic activity within the State.

16.3.1.2 Capability Standard; Adherence to Law. - In determining whether the Project will assist in creating or retaining “direct, permanent, quality full-time jobs” in the State, the Applicant shall demonstrate to the Authority that the Applicant, operator or principal user thereof has the capability to operate and maintain such Project efficiently and that the Applicant has not been convicted of a major labor law violation or of a violation involving moral turpitude by any agency or court of the federal government or agency or court of any state in the 2-year period immediately prior to the approval of the Applicant’s Application. In this regard, the Authority may, in its discretion, rely on a sworn affidavit of the Applicant or an officer of the Applicant or an opinion of counsel of the Applicant to such effect. If an Applicant has been convicted of such a violation, the Authority, in its sole discretion, may decline to consider the Application. If requested by the Authority, similar proof shall be obtained from any operator or principal user of the Project.

16.3.1.3 Business Standard. - In making findings and determinations with respect to the capital investment in a Project, the Authority will consider capital investment made and to be made in the proposed Project. If the Project involves an Agricultural Business or a Commercial Business, as those terms are defined in the Act, the Project must require a capital investment of at least ten thousand dollars (\$10,000), which funds, including the amount of Relocation Assistance will be available or expended on the date that the Authority provides such during a period of time commencing one (1) year prior to the date on which an application for Relocation Assistance is submitted to the Authority and terminating one year following the making of a grant with respect thereto. The Applicant must provide at least a One Hundred Thousand Dollar (\$100,000) capital investment in and/or secure at least One Hundred Thousand Dollars (\$100,000) of capital leases for buildings and/or equipment in the State. The term “capital investment” shall be applied in accordance with generally accepted accounting principles.

16.3.1.4 Operator and User Standard. - An Applicant shall, if requested by the Authority or required in the Application, submit such information as is requested or required for each proposed operator or principal user of the Project. The Authority shall apply the same standards with

respect to the operators and principal users of the Project as are applied to Applicants, unless there is good reason, established by the Applicant, to make the findings and determinations with respect to the Applicant alone. The financial strength of the Applicant and his capacity to manage or operate the Project, among other considerations, may be the basis for omitting such findings and determinations with respect to the operators or principal users.

16.3.2 Clawback Provision. - The Authority shall determine, in its sole discretion, appropriate clawback provisions for each Applicant under which the Applicant may be required to repay some or all of the Relocation Assistance granted under this section 16.

16.3.3 Post-Grant Period - Annual Reporting. - Unless waived or amended by the Authority in its sole discretion, the Applicant shall, for a period of five (5) years following the award of Relocation Assistance, submit to the Authority, on an annual basis, financial statements in a form acceptable to the Authority, a progress report on the status of the Project, including, but not limited to, the number of permanent, quality, full-time jobs created or saved as a result of the Project and the wage scale applicable to such persons, any economic impact of the funding (such as sales, costs, etc.) and any other information required by the Authority. Each Applicant shall report to the Authority no later than August 31 of each of the years for which the report is required.

## 17.0 EXEMPT PERSONS DEVELOPMENT ASSISTANCE

### 17.1 Program Description.

17.1.1 The Authority is empowered to make financial assistance ("Financial Assistance") in the form of grants or loans to Exempt Persons, as defined in the Act. Exempt Persons are governmental units and certain non-profit organizations described in section 501(c)(3) of the federal Internal Revenue Code of 1986 ~~public or governmental bodies ("Financial Assistance").~~ ~~The maximum amount of any Financial Assistance by the Authority shall be thirty percent (30%) of the project costs with respect to a Project. The Authority may, in its sole discretion, limit the amount of Financial Assistance in a Project to any amount less than thirty percent (30%).~~

17.1.2 The maximum amount of Financial Assistance with respect to a Project ordinarily shall be four hundred fifty thousand dollars (\$450,000), and the minimum amount of such assistance shall be thirty thousand dollars (\$30,000).

### 17.2 Eligibility Standards

17.2.1 To be eligible for Financial Assistance, a Project shall demonstrate ~~broad potential for future development or continuation of the State's economic base. to~~ contribute to the prosperity, health or general welfare of the

citizens of the State by contributing, directly or indirectly, to the retention and expansion of existing Delaware businesses, to the recruitment of new businesses to the State, or to the formation of new businesses in the State.

17.2.2 If the Applicant involves individuals or organizations other than Exempt Persons in a Project, then the Applicant must also demonstrate that the involvement of such individuals or organizations on the Project will contribute to the prosperity, health or general welfare of the citizens of the State by contributing, directly or indirectly, to the retention and expansion of ~~improve the quality and/or increase the productivity and profitability of the State's economy,~~ existing Delaware businesses, to the recruitment of new businesses to the State, or to the formation of new businesses in the State, and the Applicant must define such individual's or organization's responsibilities and document their willingness and ability to perform.

### 17.3 Project Approval Standards

17.3.1 Findings. - In connection with the approval of Financial Assistance for a Project, the Authority shall make the findings and determinations required by 29 Del. C. § ~~5055-5054(f)(2)~~ with respect to the Project. The Authority shall apply the following standards where applicable in making such findings and determinations:

17.3.1.1 General Findings Standard. - The Authority will review the information submitted by the Applicant to determine whether the Project will tend, directly or indirectly, to maintain or provide gainful employment within the State. The standards to be considered will include, but not be limited to, the number of permanent, quality, full-time jobs that could be created or saved as a result of the Project, the economic situation in the State, and the expected effect that the Project will have on the development of new or expanded economic activity within the State. If the Project is for pollution control purposes, the Authority will determine whether the Project will reduce, abate or prevent pollution of the State's environment or protect its natural resources.

17.3.1.2 Public Purpose Standard. - The Applicant must demonstrate that the proposed Project will serve a public purpose by contributing to the prosperity, health, or general welfare of the citizens of the State.

17.3.1.3 Adherence to Law. - Should the Applicant involve individuals or organizations in conjunction with a Project, findings and determinations must be made that such individuals and organizations have not been convicted of a major labor law violation or of a violation involving moral turpitude by any agency or court of the federal government or agency or court of any state in the 2-year period immediately prior to the approval of the Applicant's Application.

## 18.0 SBIR BRIDGE GRANT ASSISTANCE

### 18.1 Program Description

18.1.1 In order to encourage Delaware small businesses to participate in the federal Small Business Innovation Research (“SBIR”) program, the Authority has set forth criteria to help maintain continuing SBIR program research and development. The purposes of the SBIR program are to (i) stimulate technological innovation; (ii) use small business to meet federal research and development needs; (iii) encourage the participation by disadvantaged and minority persons in technological innovation; and (iv) increase private sector commercialization of results derived from federal research and development.

18.1.1.1 The SBIR program is divided into three phases. The purpose of SBIR Phase I is to show: (i) that the Assisted Person can do high quality research and development; (ii) that the proposed effort is technically feasible; and (iii) that sufficient progress has been made to justify a much larger federal agency investment in an Assisted Person’s project in connection with SBIR’s Phase II. An SBIR Phase I Award can be as much as one hundred thousand dollars (\$100,000). The SBIR Phase II is the principal research and development effort, with a duration which normally does not exceed two years. Federal awards for SBIR Phase II are based upon the results of SBIR Phase I and the scientific and technical merit of the SBIR Phase II proposal. The object is to continue the research and development initiated under SBIR Phase I. An SBIR Phase II ~~is a~~ award can be as much as five hundred thousand dollars (\$500,000). However, the federal government is not obliged to fund any specific Phase II proposal. SBIR Phase III encourages small businesses to seek commercialization funding principally from the private sector (no federal SBIR funding is provided).

18.1.1.2 The SBIR Bridge Grant Assistance program (the “Program”) seeks to permit the Applicant to maintain its staff and continue its research pending SBIR Phase II approval, which may take as long as nine months after the submission of an SBIR Phase II proposal. Thus, a Program grant of financial assistance (an “Award”) may be used to help cover the salaries of personnel after completion of Phase I and before Phase II monies become available. In addition, an Award may be used to help defray expenses connected with scientific research, patent search and applications, strategic and business plan development, market research, product planning and product development. Capital equipment and construction or modifications of facilities are not covered.

#### 18.1.2 Award Approval and Standards

18.1.2.1 Findings. - In connection with the approval of an Award, the Authority shall make the findings and determinations required by 29 Del. C. § 5055 with respect to the Applicant and the Project. The Authority shall apply the following standards in making such findings and determinations:

18.1.2.1.1 SBIR Participation. - In order

to be eligible for an Award, an Applicant must establish that it has been granted an SBIR Phase I award and has submitted a proposal to the appropriate federal agency for, but has not yet received, SBIR Phase II funding.

18.1.2.1.2 Principal Place of Business Standard. - In determining whether an Applicant’s principal place of business is in the State, an Applicant shall demonstrate to the Authority that its Delaware operation is either its sole operation or its primary business location.

18.1.2.1.3 Economic Benefit Standard. - When applying the “Economic Benefit Standard” the Authority will review the information submitted by an Applicant to determine whether the Project will tend to maintain or provide gainful employment within the State. The standards to be considered will include, but will not be limited to, the wage scale applicable to persons to be employed as a result of the research project, the economic situation in the State, the effect of the project on the tax base of the State, and of the county or municipality in which the project is to be located, and the expected effect that the research project will have on the development of new economic activity within the State.

18.1.2.1.4 Employment Standard. - The Authority shall require that an officer or principal of the Applicant certify to the Authority that the Applicant maintains a full-time equivalent of not more than one hundred ~~fifty~~ (100~~50~~) employees at the time of Application the Award.

18.1.3 Approval. - The Authority may, after applying the foregoing standards, approve a Project and provide an Award to an Applicant up to a maximum of fifty thousand dollars (\$50,000). No more than three (3) Awards will be granted to an Applicant in any five (5) year period. The maximum amount of Awards an Applicant may receive in a lifetime is two hundred thousand dollars (\$200,000). Additional Awards may be granted by the Authority, but the Authority may, in its discretion, require repayment of such additional awards. An Award may be made, at the sole discretion of the Authority, in a lump sum or in installments. The specific conditions under which the Authority shall make an Award to an Applicant shall be set forth in a commitment letter between the Authority and the Applicant.

18.1.4 Post-Award Documentation. - The following documentation shall be required of all Applicants receiving Awards:

18.1.4.1 A summary of the work performed under the Award no later than August 31 of each of the five (5) years following the Award or otherwise as required by the Authority. Such summary shall include projections or documentation of any actual commercialization of the Project (such as patents obtained, new products developed, etc.) and any economic impact (in terms of employment and/or sales impact with the company, etc.) of such commercialization.

18.1.4.2 Notification of Phase II SBIR award results immediately after the award is made or denied.

## 19.0 BROWNFIELD ASSISTANCE

### 19.1 Program Description

19.1.1 The Authority is empowered to make financial assistance in the form of matching grants to Applicants for the costs of conducting environmental assessments and remediation at Certified Brownfield sites investigations of vacant, unoccupied, or underutilized sites, with respect to any portion thereof, that the Applicant has reasonable cause to believe may as the result of any prior commercial or industrial activity by any person, have been environmentally contaminated in a manner that would interfere with the intended use of such site ("Brownfield Assistance").

19.1.2 ~~The maximum amount of Brownfield Assistance by the Authority shall be twenty five thousand dollars (\$25,000) or fifty percent (50%) of the total Project costs, whichever is less, for environmental investigations of sites eligible for Brownfield Assistance (an "Eligible Project"). The Authority may, in its sole discretion, limit the amount of Brownfield Assistance in any Eligible Project to any amount less than twenty five thousand dollars (\$25,000) or fifty percent (50%).~~

19.1.2 The maximum amount of Brownfield Assistance by the Authority with respect to any single Certified Brownfield shall be the lesser of (a) fifty thousand dollars (\$50,000), or (b) fifty percent (50%) [of the total costs of] environmental assessment and remediation with respect to that Certified Brownfield (an "Eligible Project"). The Authority may, in its sole discretion, limit the amount of Brownfield Assistance for any Eligible Project to any amount less than fifty thousand dollars (\$50,000) or fifty percent (50%) of environmental assessment and remediation at the Eligible Project. The Authority may not award more than one million dollars (\$1,000,000) of Brownfield Assistance, in aggregate, during any fiscal year of the State.

### 19.2 Eligibility Standards

19.2.1 The following criteria will be used to determine eligibility for Brownfield Assistance:

19.2.1.1 The proposed investment should have the potential to serve a public purpose by maintaining or expanding employment in the State by maintaining, expanding, or diversifying business and industry in the State, and/or maintaining or increasing its tax base.

19.2.1.2 Since Brownfield Assistance is in the form of matching grants, the Applicant shall demonstrate to the satisfaction of the Authority that funds are available for environmental assessment and remediation expenses at the Eligible Project ~~project expenses~~ that will equal or exceed the amount of Brownfield Assistance requested.

19.2.1.3 Because Eligible Projects must be Certified Brownfields, the Applicant must submit with its

~~Application the written certification of the Eligible Project as a Brownfield issued by the Secretary of the Department of Natural Resources and Environmental Control. Sites which qualify for Brownfield Assistance shall be Property as defined in 7 Del.C. § 9103, or any portion thereof, for which industrial or commercial development is proposed and which would result in the expansion, retention, or start-up, of an existing or new business. The Applicant shall demonstrate to the satisfaction of the Authority that reasonable cause exists for the Applicant to believe the site may have been environmentally contaminated as the result of prior commercial or industrial activity by any person other than a current or future user of the site, and that said contamination will interfere with the intended proposed use of such site.~~

19.2.1.4 ~~Eligible Project sites are vacant, unoccupied, or underutilized. An underutilized site is one that the Applicant can demonstrate to the satisfaction of the Authority (1) is not being used in its fullest capacity or form, as evidenced by historical data and/or use, or (2) is a site for which the expansion of business is targeted. Evidence of expansion shall include a business plan which outlines proposed capital investment and job creation, or retention of existing business activity.~~

19.2.1.5 ~~Eligible Projects are those which the Authority concludes, in its sole discretion, are sites of the type that are targeted by Title 7, Del. C., Chapter 91.~~

19.2.2 The following expenses or types of real property do not qualify for Brownfield Assistance:

19.2.2.1 Expenses for environmental assessment and remediation incurred prior to January 16, 2001 July 1, 1995;

19.2.2.2 Project Expenses for environmental assessment which are considered by the Authority, in its sole discretion, as normal and ordinary in the course of any financing or real estate transfer transaction or Phase One assessments;

19.2.2.3 Any site with respect to any portion of which enforcement action has been initiated under Chapter 63, Chapter 74 or §9101 of Title 7 of the Delaware Code; 42 U.S.C. § 6901 et seq.; or 42 U.S.C. § 9606 or § 9607;

19.2.2.4 Sites which are owned by a governmental unit of the State; and

19.2.2.5 Sites located outside the State.

### 19.3 Project Approval Standards

19.3.1 Findings. - As a precondition to approving Brownfield Assistance, the Authority shall make the findings and determinations required by 2[9] Del. C. § 5055 with respect to the Applicant and the Project. The Authority shall apply the following standards, where applicable, in making such findings and determinations:

19.3.1.1 ~~Employment Standard. — The Authority will review information concerning the Applicant as submitted in an Application or as otherwise available to~~

~~the Authority through independent investigation. As a condition precedent to making Brownfield Assistance to an Applicant, the Authority shall determine that the Eligible Project proposed by the Applicant will assist in maintaining or providing gainful employment within the State.~~  
Capability Standard; Adherence to Law. - In determining whether the Project may assist in creating or retaining employment in the State, the Applicant shall demonstrate to the Authority that the Applicant, operator or principal user thereof has the capability to operate and maintain such Project efficiently and that the Applicant has not been convicted of a major labor law violation or of a violation involving moral turpitude by any agency or court of the federal government or agency or court of any state in the 2-year period immediately prior to the approval of the Applicant's Application. In this regard, the Authority may, in its discretion, rely on a sworn affidavit of the Applicant or an officer of the Applicant or an opinion of counsel of the Applicant to such effect. If an Applicant has been convicted of such a violation, the Authority, in its sole discretion, may decline to consider the Application. If requested by the Authority, similar proof shall be obtained from any proposed operator or principal user of the Eligible Project.

19.3.1.2 Operator and User Standard. - An Applicant shall, if requested by the Authority or required in the Application, submit such information as is requested or required for each proposed operator or principal user of the Eligible Project. The Authority shall apply the same standards with respect to the operators and principal users of the Eligible Project as are applied to the Applicants, unless the Applicant establishes good reason to make the findings and determinations with respect to the Applicant alone.

19.3.2 Clawback Provision. - The Authority shall determine, in its sole discretion, appropriate clawback provisions for each Applicant under which the Applicant may be required to repay some or all of the Brownfield Assistance granted under this section 19.

19.3.3 Post-Grant Period - Annual Reporting. - Unless waived or amended by the Authority in its sole discretion, the Applicant shall, ~~for a period of three (3) years following the award of Brownfield Assistance,~~ within ninety (90) days after completing the environmental assessment and/or remediation at the Eligible Project, submit to the Authority a written report setting forth the total costs for management and labor, equipment, sampling and analysis and the removal and disposal of hazardous waste or other materials at the Eligible Project , on an annual basis, a progress report on the status of the Eligible Project, including, but not limited to, the number of permanent, quality, full-time jobs created or saved as a result of the Eligible Project and the wage scale applicable to such persons, an economic impact of the funding (such as sales, costs, etc.) and any other information required by the Authority. Each Applicant shall report to the Authority no

later than August 31 of each of the years for which the report is required.

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<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
211 Task Force	Mr. John McNeal	Pleasure of the Governor
	Ms. K. Jean Williams	Pleasure of the Governor
Adult Entertainment Commission	Ms. Mary Boudart	Three Years From Senate Confirmation
	Mrs. Elizabeth Olsen	Three Years From Senate Confirmation
Architectural Accessibility Board	Mr. Nash Childs	8/15/05
	Ms. Lois Dawson	9/06/05
	Mr. Francis DiSabatino, Jr., Chairperson	Pleasure of the Governor
	Mr. Armando Liberti	8/15/05
	Ms. Deana Miller	9/06/05
Board of Cosmetology and Barbering	Ms. Emma Lou Browning	10/20/03
	Mr. Preston L. Dyer	9/18/04
	Ms. Nina M. Silicato	9/18/04
Board of Examiners of Private Investigators & Private Security Agencies	Mr. Edward V. Hill	8/22/04
	Dr. Hope W. Murray	8/22/04
	Mr. Frank G. Sullivan	8/22/04
Board of Parole	Mrs. Marlene Lichtenstadter, Chair	Pleasure of the Governor
Board of Pharmacy	Ms. Donna Dagen	7/01/04
Board of the Sewell C. Biggs Collection	Mr. C. Terry Jackson, II	Pleasure of the Governor
	The Honorable Sherman Tribbitt	Pleasure of the Governor
Chief Information Officer Department of Technolgy and Information	Mr. Thomas Jarrett	Pleasure of the Governor
Committee on Massage/Bodywork Practitioners	Ms. Phyllis E. Mikell	9/18/04
	Mr. Daniel P. Stokes	9/18/04
Council on the Blind	Ms. Katherine Clark	8/28/04
	Ms. Marita Gonzalez	8/28/04
	Dr. Joel Halpern	8/28/04
	Ms. Joyce Voshell	9/14/04
Council on Environmental Control	Mr. Douglas Corey	4/22/02

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**GOVERNOR'S APPOINTMENTS**

1157

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<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Council on Hispanic Affairs	Mr. Jose F. Echeverri	9/12/04
	Mr. I. Jaime Figueras	9/12/04
	Mr. Hector Figueroa	9/12/04
	Sister Margaret M. Giblin	9/12/04
	The Honorable Joseph E. Miro	9/12/04
	Ms. Elba Quiles	9/07/04
Delaware Agricultural Lands Preservation Foundation Board	Mr. Robert R. Garey, Sr., Chair	Pleasure of the Governor
Delaware Arts Council	Ms. Kathleen M. Davis	9/07/04
	Mr. Fred Kaltreider	9/07/04
	Ms. Julia M. McCabe	9/07/04
	Mr. David Schelat	9/07/04
	Ms. Ann G. Schenck	9/07/04
Delaware Board of Nursing	Ms. Dolores Arensberg	9/14/04
	Dr. Lucille C. Gambardella	8/29/04
	Ms. Deborah Maichle	8/15/04
	Ms. Mary Jeanette Monihan	8/15/04
Delaware Gaming Control Board	Mr. Frank J. Long	8/29/06
	Mr. Ronald L. Mosher	8/29/06
	Mr. Roland Neeman	4/29/06
Dover Housing Authority	Mr. George M. Records	7/24/04
Emergency Medical Services Oversight Committee	Mr. Dale A. Callaway	Pleasure of the Governor
	Mr. Joseph David Majewski	Pleasure of the Governor
Kent County Vocational Technical Board of Education	Ms. Cynthia Brown	9/25/08
	Mr. James J. Collins	9/25/08
	Mr. Kenneth W. Edwards	5/07/05
	Mr. Frank Ingram, Jr.	9/25/08
	Mr. Raymond Patterson	9/25/08
	Mr. John Walls	9/25/08
Public Employment Relations Board	Mr. Robert Currie	Six Years From Senate Confirmation
	Mrs. Elizabeth Maron	Six Years From Senate Confirmation
Riverfront Development Corporation	The Honorable David Singleton	Pleasure of the Governor
Selective Service Board	Mr. Michael Ongay	Forwarded to the President of the United States

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# GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Selective Service Board	Mr. Samuel F. Slabaugh	Forwarded to the President of the United States
	Ms. Ellen M. Wheatley	Forwarded to the President of the United States
State Board of Examiners of Optometry	Ms. Nichole E. Anderson	9/14/04
	Dr. Thomas Bastholm	8/29/04
	Mr. Mark Metzelaar	9/27/04
	Dr. Greta Seibach-Wallis	9/14/04
State Board of Pharmacy	Ms. Jessica Davis	9/27/04
	Ms. Nancy E. Weldin	9/27/04
State Board of Plumbing Examiners	Mr. Alex J. Filippone, III	9/14/04
State Board of Social Work Examiners	Mr. Robb Carter	8/28/04
	Mr. Mack L. Davis	8/28/04
	Ms. Malisa L. Knox	8/28/04
	Mr. Timothy J. Toole	8/28/04
	Ms. Jymayce Y. Wescott	8/28/04
State Committee of Dietetics & Nutritionists	Ms. Mary Shapero	9/06/04
State Examining Board of Physical Therapists	Ms. Phyllis Collins	9/07/04
	Mr. Jeff Fitz	7/24/04
	Mr. Bernard A. Pinkett	9/07/04
State Fire Prevention Commission	Mr. Daniel Magee	8/15/07
Sussex County Vocational Technical School Board	Mr. Frank Calio	9/25/08
Wastewater Facilities Advisory Council	Mr. Lee Beetschen	Three Years From Senate Confirmation
	Ms. Grace Pierce-Beck	Three Years From Senate Confirmation
Wilmington Area Planning Council	Ms. Andrea Kreiner	7/01/03
Workforce Investment Board	Mr. John McMahon, Chairman	Pleasure of the Governor

**DEPARTMENT OF INSURANCE**

Statutory Authority: 18 Delaware Code,  
Section 311 (18 Del. C. 311)

**AGENTS BULLETIN NO. 8****EXECUTIVE ORDER BLOCKING PROPERTY AND  
PROHIBITING TRANSACTIONS WITH PERSONS  
WHO PERMIT, THREATEN TO COMMIT, OR  
SUPPORT TERRORISM**

**Issued: October 6, 2001**

**TO: ALL LICENSEES**

**FROM: DONNA LEE H. WILLIAMS,  
COMMISSIONER**

In response to the terrorist attacks in New York, Pennsylvania, and the Pentagon committed on September 11, 2001, President Bush issued an Executive Order, effective September 24, 2001, which provides that property and interests in property of those persons and entities listed in the Annex to the Executive Order (a copy of the list is attached to this Bulletin) that are either in the United States or come into the United States are blocked. This includes the making or receiving of any contribution of funds, goods, or services to or for the benefit of those persons or entities listed in the Annex to the Order or otherwise determined to be subject to the Order.

The purpose of this Bulletin is to advise all insurers and licensees to become familiar with their obligations under the Executive Order. All insurers and licensees should review their records for any information that may be relevant to the Executive Order. Insurers and licensees should also review the United States Department of the Treasury, Office of Foreign Assets Control, website, [www.treas.gov/ofac](http://www.treas.gov/ofac), which will provide additional updated information regarding these requirements. Questions regarding the Executive Order should be directed to the Office of Foreign Assets Control. Entities found to have violated this Executive Order may be subject to sanction.

Insurers and licensees reporting information to federal authorities should also notify Mr. Gene Reed, Director, Licensing and Consumer Services, Delaware Insurance Department, 841 Silver Lake Blvd., Dover, DE 19904-2465.

Donna Lee H. Williams, Commissioner

**ANNEX TO EXECUTIVE ORDER**

Al Qaida/Islamic Army  
Abu Sayyaf Group

Armed Islamic Group (GIA)  
Harakat ul-Mujahidin (HUM)  
Al-Jihad (Egyptian Islamic Jihad)  
Islamic Movement of Uzbekistan (IMU)  
Asbat al-Ansar  
Salafist Group for Call and Combat (GSPC)  
Libyan Islamic Fighting Group  
Al-Itihaad al-Islamiya (AIAI)  
Islamic Army of Aden  
Usama bin Laden  
Muhammad Atif (aka, Subhi Abu Sitta, Abu Hafs Al Masri)  
Sayf al-Adl  
Shaykh Sai'id (aka, Mustafa Muhammad Ahmad)  
Abu Hafs the Mauritanian (aka, Mahfouz Ould al-Walid, Khalid Al-Shanqiti)  
Ibn Al-Shaykh al-Libi  
Abu Zubaydah (aka, Zayn al-Abidin Muhammad Husayn, Tariq)  
Abd al-Hadi al-Iraqi (aka, Abu Abdallah)  
Ayman al-Zawahiri  
Thirwat Salah Shihata  
Tariq Anwar al-Sayyid Ahmad (aka, Fathi, Amr al-Fatih)  
Muhammad Salah (aka, Nasr Fahmi Nasr Hasanayn)  
Makhtab Al-Khidamat/Al Kifah  
Wafa Humanitarian Organization  
Al Rashid Trust  
Mamoun Darkazanli Import-Export Company

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**DOMESTIC/FOREIGN INSURERS BULLETIN NO. 9****EXECUTIVE ORDER BLOCKING PROPERTY AND  
PROHIBITING TRANSACTIONS WITH PERSONS  
WHO PERMIT, THREATEN TO COMMIT, OR  
SUPPORT TERRORISM**

**Issued: October 6, 2001**

**TO: ALL INSURERS AND LICENSEES**

**FROM: DONNA LEE H. WILLIAMS,  
COMMISSIONER**

In response to the terrorist attacks in New York, Pennsylvania, and the Pentagon committed on September 11, 2001, President Bush issued an Executive Order, effective September 24, 2001, which provides that property and interests in property of those persons and entities listed in the Annex to the Executive Order (a copy of the list is attached to this Bulletin) that are either in the United States or come into the United States are blocked. This includes the making or receiving of any contribution of funds, goods, or services to or for the benefit of those persons or entities

listed in the Annex to the Order or otherwise determined to be subject to the Order.

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Donna Lee H. Williams, Commissioner

#### ANNEX TO EXECUTIVE ORDER

Al Qaida/Islamic Army  
 Abu Sayyaf Group  
 Armed Islamic Group (GIA)  
 Harakat ul-Mujahidin (HUM)  
 Al-Jihad (Egyptian Islamic Jihad)  
 Islamic Movement of Uzbekistan (IMU)  
 Asbat al-Ansar  
 Salafist Group for Call and Combat (GSPC)  
 Libyan Islamic Fighting Group  
 Al-Itihaad al-Islamiya (AIAl)  
 Islamic Army of Aden  
 Usama bin Laden  
 Muhammad Atif (aka, Subhi Abu Sitta, Abu Hafs Al Masri)  
 Sayf al-Adl  
 Shaykh Sai'id (aka, Mustafa Muhammad Ahmad)  
 Abu Hafs the Mauritanian (aka, Mahfouz Ould al-Walid, Khalid Al-Shanqiti)  
 Ibn Al-Shaykh al-Libi  
 Abu Zubaydah (aka, Zayn al-Abidin Muhammad Husayn, Tariq)  
 Abd al-Hadi al-Iraqi (aka, Abu Abdallah)  
 Ayman al-Zawahiri  
 Thirwat Salah Shihata  
 Tariq Anwar al-Sayyid Ahmad (aka, Fathi, Amr al-Fatih)  
 Muhammad Salah (aka, Nasr Fahmi Nasr Hasanayn)  
 Makhtab Al-Khidamat/Al Kifah  
 Wafa Humanitarian Organization  
 Al Rashid Trust  
 Mamoun Darkazanli Import-Export Company

## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL DIVISION OF AIR & WASTE MANAGEMENT AIR QUALITY MANAGEMENT SECTION

**Secretary's Order No.: 2001-A-0039**

**RE: Measures to Meet the EPA-Identified Shortfalls in  
 Delaware's Phase II Attainment Demonstration  
 For the Philadelphia-Wilmington-Trenton  
 Ozone Non-Attainment Area  
 -State Implementation Plan Revision-**

**Date of Issuance: October 2, 2001**

**Effective Date of the Amendment: November 11, 2001**

#### I. Background

On Thursday, August 23, 2001, a public hearing was held in the Priscilla Building Conference Room of DNREC in Dover to receive comment on a proposed revision to the State Implementation Plan (SIP) to meet EPA-Identified shortfalls in Delaware's Phase II Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Non-Attainment Area. This proposed revision to the SIP for attainment of the 1-Hour standard for ground-level ozone is based on work that was performed regionally to identify emission control strategies and develop regulations that will close shortfalls in the attainment demonstrations for several ozone non-attainment areas in the Northeast. The Ozone Transport Commission coordinated the regional work, and several members of the Department at DNREC participated in the same. Additionally, the Ozone Transportation Commission hired a contractor, E.H. Pechan, to analyze the benefits of the model rules, thereby guaranteeing that the methods used to calculate emission reductions in the model rules were consistent in all parts of the ozone transport region.

This SIP revision covers the Philadelphia-Wilmington-Trenton ozone non-attainment area, which includes Kent and New Castle Counties in Delaware. However, the emission reductions are derived from a slightly larger area, which includes the non-attainment area itself, plus counties within 100 kilometers of the non-attainment areas. The aforementioned SIP revision (which is the subject of this report) is a non-regulatory plan that relies on the promulgation of the six Ozone Transport Commission model rules by each state in the designated area. Delaware is in the process of taking each of its versions of the six model rules through the public review and comment process. Thus, the comments that were made at this public hearing were limited

to the non-regulatory plan previously mentioned above.

The Department has proposed to submit this analysis document to the Environmental Protection Agency (EPA) as a State Implementation Plan (SIP) Revision concerning the Delaware Ozone Attainment Demonstration. Written comments were received from Doug Raymond, Director of Regulatory Affairs, Sherwin Williams Consumer Group, regarding this proposed SIP revision, which were addressed by the Department in their response memorandum dated September 26, 2001. Proper notice of the hearing was provided as required by law.

After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared her report and recommendation in the form of a Hearing Officer's Report to the Secretary dated October 1, 2001, and that memorandum is expressly incorporated herein by reference.

## **II. Findings and Conclusions:**

On the basis of the record developed in this matter, it appears that AQM has provided a sound basis for the proposed revision to the State Implementation Plan (SIP) with respect to measures to meet the EPA-identified shortfalls in the Delaware Phase II attainment demonstration for the Philadelphia-Wilmington-Trenton Ozone non-attainment area, and has demonstrated Delaware's strategy for attaining the one-hour national ambient air quality standards (NAAQS) for ground-level ozone by the year 2005.

## **III. Order**

It is hereby ordered that AQM's suggested revisions with respect to the Measures to Meet the EPA-Identified Shortfalls to the State Implementation Plan (also known as "The Shortfall SIP") be made, and that the proposed amendment be promulgated in final form, in accordance with the customary and established rule-making procedure required by law.

## **IV. Reasons**

This revision to the SIP with respect to measures to meet the EPA-identified shortfalls in the Delaware Phase II attainment demonstration for the Philadelphia-Wilmington-Trenton Ozone non-attainment area demonstrates Delaware's strategy for attaining the one-hour national ambient air quality standards (NAAQS) for ground-level ozone by the year 2005, in furtherance of the policy and purposes of 7 Del. C., Ch. 60.

Nicholas A. DiPasquale, Secretary

## **Final Draft**

### **MEASURES TO MEET THE EPA-IDENTIFIED SHORTFALLS IN THE DELAWARE PHASE II ATTAINMENT DEMONSTRATION FOR THE PHILADELPHIA-WILMINGTON-TRENTON OZONE NON-ATTAINMENT AREA**

#### **Prepared For:**

**The U.S. Environmental Protection Agency  
July, 2000**

**Delaware Department of Natural Resources &  
Environmental Control  
Division of Air and Waste Management  
Air Quality Management Section**

#### **A. List of Attachments to SIP Submission**

1. **Attachment 1** -- Marine Engine and Locomotive Engine Standards: Emission Reduction Calculations for Sussex County
2. **Attachment 2** -- On-Road Heavy Duty Diesel Standards: Emission Reduction Break-Out and MOBILE 5b Outputs for Kent, New Castle, and Sussex Counties
3. **Attachment 3** -- Ozone Transport Commission Document: *OTC States' Approach to Achieving Emission Reductions in the Ozone Transport Region from Implementing Model Rules, Ozone Transport Commission*
4. **Attachment 4** -- E. H. Pechan Document: *Control Measure Development Support Analysis of Ozone Transport Commission Model Rules*

#### **I. Preface**

This revision to Delaware's State Implementation Plan (SIP) is based on work that was performed regionally to identify emission control strategies and develop model regulations that will close shortfalls in the attainment demonstrations for several ozone non-attainment areas in the Northeast. The Ozone Transport Commission (OTC) coordinated the regional work. Several Delaware employees participated in the regional work. In addition, the OTC hired a contractor, E.H. Pechan, to analyze the benefits of the model rules. This approach guaranteed that the methods used to calculate emission reductions from the model rules were consistent in all parts of the Ozone Transport Region.

Information specific to the areas within and surrounding the Philadelphia-Wilmington-Trenton ozone non-attainment area, including Delaware, are contained herein. Details of the OTC regional work, and the resulting regional data, are contained in 2 documents attached to the SIP submission for

reference. These documents are:

- *OTC States' Approach to Achieving Additional Emission Reductions in the Ozone Transport Region from Implementing Model Rules*, the Ozone Transport Commission, May 18, 2001.
- *Control Measure Development Support Analysis of Ozone Transport Commission Model Rules*, E.H. Pechan, March 31, 2001.

These documents are available on the OTC web site at <http://www.sso.org/otc/> under "Publications".

1.1 Organizational and Staff Responsibilities

This SIP revision was developed by the Delaware Department of Natural Resources and Environmental Control (DNREC), Division of Air and Waste Management, Air Quality Management Section under the direction of the following officials and managers:

- Nicholas A. Di Pasquale - Secretary, DNREC
- William Hill - Acting Director, Division of Air and Waste Management
- Ali Mirzakhali - Program Administrator, Air Quality Management Section
- Raymond H. Malenfant - Program Manager, Planning and Community Protection Branch
- S. Michael Thompson - Planning Supervisor, Airshed Assessment and Improvement Program

Responsible Staff

Employee	Title	Assignment	Phone
Alfred R. Deramo	Planner	Author of SIP Submission	739-4791
Mohammed A. Majeed	Environ. Engineer	SIP Technical Reviewer	739-4791
Frank Gao	Environ. Engineer	Federal Rule Benefits	739-4791
Ronald A. Amirikian	Program Manager	Model Rule Development	323-4542

II. Introduction

Delaware has two counties, Kent and New Castle, that are part of the Philadelphia-Wilmington-Trenton non-attainment area with respect to the 1 hour ozone national ambient air quality standard. The Philadelphia-Wilmington-Trenton ozone non-attainment area also contains parts of Maryland, Pennsylvania and New Jersey, and has a total of 14 counties (see Figure 1).

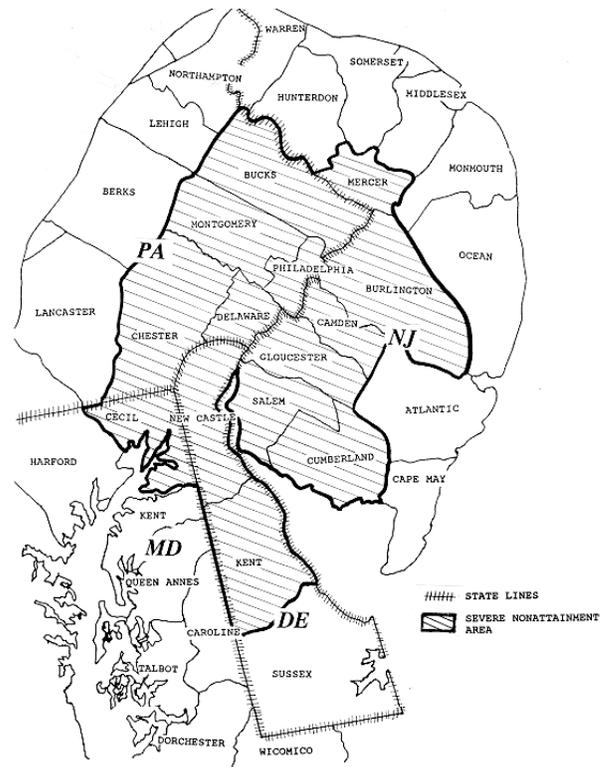


Figure 1 - Philadelphia-Wilmington-Trenton Severe Ozone Non-Attainment Area

The Philadelphia-Wilmington-Trenton non-attainment area is classified as a "severe" non-attainment area with respect to the degree of 1-hour ozone non-attainment. Under the Clean Air Act Amendments of 1990, this severe non-attainment area is required to reach attainment by 2005. In order to demonstrate that the non-attainment area is on track for reaching attainment by 2005, states in the non-attainment area were required to submit attainment demonstrations to the United States Environmental Protection Agency (EPA). These attainment demonstrations were required to show, through atmospheric photochemical computer modeling, that the current and planned pollution reduction measures will bring the non-attainment area into attainment by the end of the 2005 ozone season.

2.1 Attainment Demonstrations

In spite of many attempts, the states in the Philadelphia-Wilmington-Trenton non-attainment area have had great difficulty in demonstrating attainment through modeling. In May, 1998, Delaware submitted to EPA a document entitled *The Delaware Phase II Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Non-Attainment Area*. This document contained the results of extensive

atmospheric photochemical modeling for the non-attainment area. Although one modeled episode in that attainment demonstration predicted attainment for Delaware's portion of the non-attainment area, it did not predict attainment for the entire area, as mandated by the Clean Air Act. The modeling contained current and planned reductions within the non-attainment area, plus reductions in transported nitrogen oxide (NOx) emissions as a result of the regional NOx SIP Call.<sup>1</sup> Even with the reductions in regional NOx transport, the non-attainment area could not fully demonstrate attainment. Because of this problem, EPA cannot approve the attainment demonstrations for the non-attainment area without the inclusion of additional reductions.

In order to facilitate the production of acceptable attainment demonstrations, and at the same time further reduce the problem of pollution transport, EPA agreed to extend the deadline for submission of acceptable attainment demonstrations if the states would do two things. First, the states in the Ozone Transport Region, comprising most of the Northeastern and Mid-Atlantic U.S., must work together to develop a set of common pollution reductions measures. Second, the states in the non-attainment area must revise their attainment demonstrations by including the reductions from the regional measures plus any state-specific measures needed to close an emission reduction shortfall as defined by EPA.

**2.2 Attainment Shortfalls**

In a series of Federal Register notices on December 16, 1999, EPA issued proposed rules to accomplish the above goals. The notices include the quantification of the attainment shortfalls for the applicable non-attainment areas. The Federal Register Notice pertaining to Delaware is 64 FR 70443. In this notice, EPA identifies the emission reduction shortfall for the Philadelphia-Wilmington-Trenton non-attainment area, and instructs Delaware to work with the

1. The NOx SIP Call was a requirement issued by EPA as a final rule through Federal Register Notice 63 FR 57397, entitled, *Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone*, September 24, 1998. Nineteen states plus the District of Columbia were required to comply with an EPA-derived NOx emissions budget in order to reduce transport of NOx to downwind ozone non-attainment areas. For details, see the SIP submission entitled, *Delaware Plan for Meeting the Nitrogen Oxide (NOx) Budget Requirements Contained in the EPA NOx SIP Call*, Delaware Department of Natural Resources and Environmental Control (DNREC), November 2000.

other states to eliminate this shortfall. In 64 FR 70443, EPA determined that the Philadelphia-Wilmington-Trenton non-attainment area is short of its attainment emission level target by amounts equal to 4.5 percent of the 1990 baseline emission inventory for volatile organic compounds (VOC) and 0.3 percent of the 1990 baseline emission inventory for nitrogen oxides (NOx). The EPA-derived additional reductions that equate to these percentages are contained in Table 1.

**Table 1  
Additional Reductions of VOC and NOx For  
Philadelphia-Wilmington-Trenton  
Non-Attainment Area**

VOC Reductions (tons/day)	NOx Reductions (tons/day)
62	3

**III. Ozone Transport Region Model Rules**

In order to produce new pollution control measures to close the attainment shortfall, the states in the Philadelphia-Wilmington-Trenton non-attainment area cooperated with other states in the Ozone Transport Region to develop six model rules. The Ozone Transport Commission coordinated model rule development. The model rules will be adopted and implemented by each state in the non-attainment area.

**3.1 Reductions in the Non-Attainment Area**

The six model rules and the expected reductions for the Philadelphia-Wilmington-Trenton non-attainment area are listed in Table 2.

**Table 2 Reductions from Model Rules for the  
Philadelphia-Wilmington-Trenton  
Non-Attainment Area**

Model Rule	Reduction Benefit by 2005 (tons/day)	
	VOC	NOx
NOx Model Rule	N/A	6
Consumer Products	9	N/A
Portable Fuel Containers	5	N/A
Architect. & Indust. Maintenance (AIM) Coatings	19	N/A
Mobile Equipment Refinishing	6	N/A
Solvent Cleaning Operations	20	N/A
<b>Total</b>	<b>59</b>	<b>6</b>

The Delaware-specific versions of the model rules will be submitted to EPA as separate SIP revisions, and will be incorporated into the Regulations Governing the Control of Air Pollution. Table 3 contains the regulation numbers and titles, and the expected reductions for Kent and New Castle Counties. Table 4 contains the expected reductions from the model rules for the counties of the other states in the Philadelphia-Wilmington-Trenton non-attainment area.

**Table 3**  
**Delaware Regulations and Their Expected Reductions for Kent & New Castle Counties**

Regulation Number and Title	Expected Benefit by 2005 (tons/day)			
	Kent		New Castle	
	VOC	NOx	VOC	NOx
Reg. 42, Sect. 1 – Control of NOx Emiss. From Indust. Boilers	N/A	0.00	N/A	0.36
Reg. 41, Sect. 2 – Consumer Products	0.17	N/A	0.68	N/A
Reg. 41, Sect. 3 – Portable Fuel Containers	0.09	N/A	0.43	N/A
Reg. 41, Sect. 1 – Architectural & Industrial Maintenance Coatings	0.38	N/A	1.46	N/A
Reg. 24, Sect. 11 (amended) – Mobile Equip. Repair & Refinish.	0.07	N/A	0.29	N/A
Reg. 24, Sect. 33 (amended) – Solvent Cleaning & Drying	0.48	N/A	0.91	N/A
<b>County Totals</b>	<b>1.19</b>	<b>0.00</b>	<b>3.77</b>	<b>0.36</b>

**Table 4**  
**Model Rule Benefits for Counties of Other States in the Philadelphia-Wilmington-Trenton Non-Attainment Area**

Model Rule Benefits for 2005 (tons/day)		
State	County	

		Total NOx (NOx Model Rule)	Consumer Products (VOC)	Portable Fuel Containers (VOC)	AIM Coatings (VOC)	Mobile Equip-ment Refin-ishing (VOC)	Solvent Clean-ing Operations (VOC)	Total VOC
MD	Cecil	0.00	0.11	0.06	0.24	0.00	0.00	0.42
NJ	Burlington	0.29	0.60	0.33	1.29	0.46	0.20	2.88
	Camden	0.07	0.72	0.38	1.56	0.56	0.24	3.47
	Cumberland	0.80	0.20	0.09	0.44	0.16	0.07	0.95
	Gloucester	0.01	0.35	0.19	0.75	0.27	0.12	1.68
	Mercer	1.05	0.47	0.27	1.02	0.36	0.16	2.29

	Salem	1.02	0.09	0.05	0.20	0.07	0.03	0.45
PA	Bucks	0.00	0.83	0.56	1.79	0.64	2.78	6.60
	Chester	0.46	0.59	0.39	1.26	0.45	1.97	4.66
	Delaware	0.89	0.78	0.45	1.69	0.60	2.63	6.16
	Montgomery	0.30	1.02	0.78	2.19	0.78	3.42	8.19
	Philadelphia	0.59	2.11	0.93	4.54	1.62	7.07	16.28

Note: Totals may not equal the sum of the individual benefits due to rounding

**3.2 Reductions in Counties Outside of Non-Attainment Area**

In order to produce further benefit for the Philadelphia-Wilmington-Trenton non-attainment area, the states decided to also apply the six new regulations to 19 counties outside the non-attainment area. The outside counties being credited to the non-attainment area fall within 100 kilometers of the non-attainment area. The creditable range of 100 kilometers is in accordance with EPA guidelines. The outside counties and their VOC reduction are listed in Table 5.

**Table 5**  
**VOC Reductions (Tons/Day) From Counties Within 100 KM of Non-Attainment Area**

Delaware		Maryland		New Jersey		Pennsylvania	
County	VOC	County	VOC	County	VOC	County	VOC
Sussex	1.6	Caroline	0.3	Atlantic	1.7	Adams	0.9
		Dorchester	0.4	Cape May	0.7	Berks	3.9
		Kent	0.2			Cumber-land	2.3
		Queen Annes	0.4			Dauphi-n	2.8
		Talbot	0.4			Lancast-er	5.1
		Wicomico	0.9			Lebano-n	1.3
						Lehigh	3.3
						Northa-mpton	2.9
						Schuyk-ill	1.7
						York	4.1
<b>Total</b>	<b>1.6</b>	<b>Total</b>	<b>2.6</b>	<b>Total</b>	<b>2.4</b>	<b>Total</b>	<b>28.3</b>

Extending the VOC rules to the counties outside the non-attainment area but within 100 kilometers of the non-attainment area adds about 35 tons/day of VOC reductions to the 59 tons/day of VOC reductions from within the non-attainment area. This gives a total of 94 tons/day of VOC

reductions that can be applied to the attainment shortfall for the Philadelphia-Wilmington-Trenton non-attainment area. An additional benefit of 1 ton/day of NOx reduction is picked up by applying the NOx Model Rule to sources outside of the non-attainment area but within 100 kilometers. The total VOC and NOx benefits from the non-attainment area plus the counties within 100 kilometers are compared to the EPA-derived shortfalls in Table 6.

**Table 6**  
**Total Model Rule Benefits Versus EPA-Derived Shortfalls for Philadelphia-Wilmington-Trenton Non-Attainment Area (Tons/Day)**

Pollutants	EPA-Derived Shortfalls	Benefits: Non-Attainment Area Plus 100 Kilometers
VOC	62	94
NOx	3	7

As can be seen from Table 6, the model rules achieve more VOC and NOx reductions than necessary to close the attainment shortfall.

**IV. Delaware-Specific Reductions**

In addition to the benefits from the regional model rules, Delaware is identifying emission reduction benefits from the implementation of three federal rules that were not available when the original modeling for the attainment demonstration was conducted. As indicated in EPA's Federal Register Notice 64 FR 70443, the benefits from these measures were not included in the May 1998 submission of the *Delaware Phase II Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Non-Attainment Area*. The three federal rules and their benefits are listed in Table 7.

**Table 7**  
**Delaware Emission Reduction Benefits from Implementation of Three Federal Rules (Tons/Day)**

Federal Rule	Kent		New Castle		Sussex	
	VOC	NOx	VOC	NOx	VOC	NOx
Marine Engine Standards	0.02	0.00	2.02	- 0.11	0.18	- 0.01
Locomotive Engine Standards	0.00	0.14	0.00	0.63	0.00	0.15
On-Road Heavy Duty Diesel Standards	0.00	0.02	0.00	0.05	0.00	0.02
<b>Total</b>	<b>0.02</b>	<b>0.16</b>	<b>2.02</b>	<b>0.57</b>	<b>0.18</b>	<b>0.16</b>

Note: Negative numbers in Table 7 indicate NOx increases.

The reductions in Kent and New Castle Counties from these three federal measures were included in Delaware's 2005 Rate-of-Progress Plan but not in Delaware's Attainment Demonstration. Therefore, they are being applied to the attainment shortfall. The emission reduction calculations for marine engines and locomotives in Kent and New Castle Counties are contained in Section IV of the *Delaware 2005 Rate-of-Progress Plan for Kent and New Castle Counties*, December 2000. Because that rate-of-progress plan does not cover Sussex County, the emission reduction calculations for marine engines and locomotives in Sussex County are being submitted as *Attachment 1* to this SIP submission. Emission Reductions for on-road heavy-duty diesel engines in Kent and New Castle Counties were included in the total calculation for on-road mobile emission controls in the *Delaware 2005 Rate-of Progress Plan for Kent and New Castle Counties*, but were not broken out as a line item. Therefore, MOBILE 5a model runs and emission reduction break-outs for on-road heavy-duty diesel standards in Kent and New Castle Counties, as well as those for Sussex County, are being submitted as *Attachment 2* to this SIP submission.

**V. Summary of Reductions**

Table 8 shows the new total benefits for the non-attainment area when the Delaware-specific reductions from the three federal rules are added to the reductions from the OTC model rules.

**Table 8**  
**Total Reductions Applied to Non-Attainment Area Shortfall**

Pollutant	Reductions (tons/day)		
	OTC Model Rules in NAA + 100 KM	3 Federal Rules in Delaware	Total Reductions in NAA + 100 KM
VOC	94	2	96
NOx	7	1	8

The analysis contained in this document has shown that the implementation of the OTC model rules in the Philadelphia-Wilmington-Trenton non-attainment area and 19 counties within 100 kilometers of the non-attainment area will result in ample emission reductions to close the EPA-identified attainment shortfall. The inclusion of additional emission reductions in Kent, New Castle and Sussex Counties from the implementation of three federal rules not

previously counted toward attainment further increases the total amount of benefits that can be counted towards attainment for the Philadelphia-Wilmington-Trenton non-attainment area. The emission reduction efforts described in this document are significant, and are intended to enhance the chances of attaining the 1-hour ozone standard by 2005.

### VI. Mid-Course Review

In order to check our progress toward attaining the 1-hour ozone standard by 2005, Delaware plans to conduct an analysis prior to that date. This analysis, termed the mid-course review, will follow EPA guidelines and will show that either 1) the adopted control measures are sufficient to reach attainment by 2005, or 2) additional control measures will be needed for attainment. Delaware previously committed to the mid-course review in its January 2000 SIP submission, *Addendum to the Delaware Phase II Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Non-Attainment Area*. Delaware is herein reiterating its previous commitment, and is also committing to submit the mid-course review to EPA no later than December 31, 2004.

#### ATTACHMENT 1

Marine Engine and Locomotive Engine Standards:  
Emission Reduction Calculations for Sussex County  
(Available by Request)

#### ATTACHMENT 2

On-Road Heavy Duty Diesel Standards:  
Emission Reduction Break-Out and MOBILE 5b Outputs for  
Kent, New Castle, and Sussex Counties  
(Available by Request)

#### ATTACHMENT 3

Ozone Transport Commission Document:  
OTC States' Approach to Achieving Emission Reductions in  
the Ozone Transport Region from Implementing Model  
Rules  
(Available by Request)

#### ATTACHMENT 4

E. H. Pechan Document:  
Control Measure Development Support Analysis of  
Ozone Transport Commission Model Rules  
(Available by Request)

## DIVISION OF AIR & WASTE MANAGEMENT AIR QUALITY MANAGEMENT SECTION

**Secretary's Order No.: 2001-A-0036**

**RE: Analysis of the Effectiveness of  
Reasonable Available Control Measures (RACM)  
To Attain the 1-Hour Ozone Standard  
-State Implementation Plan Revision-**

**Date of Issuance: October 2, 2001**

**Effective Date of the Amendment: November 11, 2001**

### I. Background

On Thursday, August 23, 2001, a public hearing was held in the Priscilla Building Conference Room of DNREC in Dover to receive comment on a proposed revision to the State Implementation Plan (SIP) for the Attainment and Maintenance of the National Ambient Air Quality Standards for ground level ozone. This proposed amendment details the Department's Analysis of the Effectiveness of Reasonable Available control Measures (RACM) to attain the 1-Hour Ozone Standard. It also includes an analysis of the air quality benefits of implementing transportation control measures (TCM) whose purpose is to reduce air emissions by reducing automobile usage and increasing other transportation choices, such as providing more transit service to the motoring public. The Department has proposed to submit this analysis document to the Environmental Protection Agency (EPA) as a State Implementation Plan (SIP) Revision concerning the Delaware Ozone Attainment Demonstration. No written comments were received from the public regarding this proposed SIP revision. Proper notice of the hearing was provided as required by law.

After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared her report and recommendation in the form of a Hearing Officer's Report to the Secretary dated August 24, 2001, and that memorandum is expressly incorporated herein by reference.

### II. Findings and Conclusions

On the basis of the record developed in this matter, it appears that AQM has provided a sound basis for the proposed revision to the State Implementation Plan (SIP) for the Attainment and Maintenance of the National Ambient Air Quality Standards for ground-level ozone, and has demonstrated Delaware's strategy for attaining the one-hour national ambient air quality standards (NAAQS) for ground-level ozone by the year 2005. Further, the following findings have been made:

1. Proper notice of the hearing was provided as required by law.

2. No TCMs will be adopted by the Department into the SIP, due to the availability of options, comparative costs, low emission reduction potentials, and, even if the TCMs were adopted, they would not help advance the attainment date.

3. This SIP revision will provide actual documentation with respect to the fact that the RACM analysis did, in fact, take place, and how it was used in the SIP.

### **III. Order**

It is hereby ordered that AQM's suggested revisions to the State Implementation Plan be made, and that the proposed amendment be promulgated in final form, in accordance with the customary and established rule-making procedure required by law.

### **IV. Reasons**

This revision to the SIP for the Attainment and Maintenance of the National Ambient Air Quality Standards for ground-level ozone demonstrates Delaware's strategy for attaining the one-hour national ambient air quality standards (NAAQS) for ground-level ozone by the year 2005. Furthermore, it includes an analysis of the air quality benefits of implementing transportation control measures (TCMs), whose purpose is to reduce air emissions by reducing automobile usage and increasing other transportation choices, such as providing more transit service to the motoring public, in furtherance of the policy and purposes of 7 Del. C., Ch. 60.

Nicholas A. DiPasquale, Secretary

**ANALYSIS OF THE EFFECTIVENESS OF  
REASONABLE AVAILABLE CONTROL MEASURES  
TO ATTAIN THE  
1-HOUR OZONE STANDARD  
Proposal**

**To Submit this Document to EPA  
As a State Implementation Plan Revision Concerning  
The Delaware Ozone Attainment Demonstration**

**Prepared by  
State Of Delaware  
Department Of Natural Resources And Environmental  
Control  
Division Of Air and Waste Management  
Air Quality Management Section**

**July 12, 2001**

### **Preface**

The purpose of this document is to respond to a request for additional information from the U.S. Environmental Protection Agency (EPA), as an addendum to the Delaware State Implementation Plan (SIP) for the severe ozone non-attainment area including New Castle and Kent counties. The document examines the value of adding reasonably available control measures (RACM) as part of the State Implementation Plan to significantly increase Delaware's likelihood of attaining the one-hour ozone standard prior to the year 2005. Section 172(c)(1) of the Clean Air Act requires that the State consider adopting these measures as a means to achieve the air quality standards by the specified attainment date.

This analysis focuses on transportation control measures (TCM) that would be applicable to the RACM requirement in Section 172(c)(1). Section 108 (f) of the Clean Air Act describes some of the programs that can be considered as TCM. The analysis will also compare the emission reductions of TCM with area and point source controls, also known as reasonably available control technology (RACT). To date, no TCM have been adopted in the Delaware's SIP, however, there have been several RACT measures adopted which satisfies the requirements in Section 172(c)(1) of the Clean Air Act. This report will discuss why the TCM were not adopted as part of any SIP revisions to attain the one-hour ozone standard.

EPA guidance (57 FR AT 13560, April 16, 1992) provides the definition of RACM. The guidance states that measures which can be implemented and produce sufficient benefits to advance the attainment date can be considered to be RACM. The guidance states that cost can be a factor in determining whether a measure is reasonable. EPA guidance notes that measures that are not enforceable are not RACM. TCM only provide a marginal benefit in reducing ozone precursor emissions, while other TCM are so costly that they would put a serious financial constraint on the state's transportation budget. In addition, the TCM that the State of Delaware will implement as part of transportation plans have budgetary constraints and are not enforceable under Delaware law. Therefore the measures may be discontinued or delayed without being in noncompliance with any Delaware statute.

### **History**

As required by the Clean Air Act, Delaware must submit to EPA an enforceable plan to attain the one-hour ozone standard by the year 2005. The attainment plan, Phase I and II, was submitted to EPA in 1997 and 1998, respectively. Phase II was later revised and submitted to

EPA in January of 2000. As part of the Philadelphia-Wilmington-Trenton Non-attainment Area, Delaware will be part of regional effort to reduce volatile organic compound (VOC) emissions and oxides of nitrogen (NO<sub>x</sub>), and propose a plan to EPA in the fall of 2001. In addition, Delaware must show a rate of progress towards attaining the standard by each milestone year. Delaware has submitted to EPA the 1996, 1999, 2002, and 2005 rate of progress plans. The first rate of progress plan submitted to EPA showed a 15% reduction of VOC (a precursor pollutant to ozone) from 1990 levels. Subsequent rate of progress plans demonstrated an additional 3% reduction per year in both VOC and NO<sub>x</sub> out to the year 2005. To achieve rate of progress and to demonstrate attainment, RACT controls were adopted as enforceable measures to achieve the stated planned reductions. The RACT measures adopted and the related emission reductions of VOC and NO<sub>x</sub> are provided later in this report.

#### Delaware Ozone Attainment Strategy Workgroup

On April 17, 1998, the Ozone Attainment Strategy Workgroup met to ascertain what emission reduction strategies needed to be analyzed for feasibility and effectiveness. Members of the workgroup included State of Delaware agencies (Department of Transportation, Division of Motor Vehicles, the Economic Development Office and Department of Agriculture), environmental groups (Delaware Nature Society and Green Delaware), industry representatives (Delmarva Power and Light, Delaware Petroleum Council, Star Enterprise, SPI Polyols Inc., DuPont Corp, Saftey Kleen Corp., Delaware Automobile Dealers Association, Kent County Motor Sales, Delaware State Chamber of Commerce), transportation planning organizations (Wilmington Area Planning Council and the Dover Metropolitan Planning Organization) and officials from the governor's office as well as representatives of Delaware's state and U.S legislators. The group discussed the "home grown" ozone reductions as well as the regional ozone transport issues. The group was presented with possible strategies to reduce VOC and NO<sub>x</sub>. The group discussed the promotion of statewide, multi-modal transportation choice programs, acknowledging them as beneficial in reducing the amount of vehicle miles traveled in the state and thereby reducing mobile source emissions. The multi-modal programs and enhancements mirrored the kinds of measures the Clean Air Act described in Section 108(f). However, the Air Quality Management Section of the Department of Natural Resources and Environmental Control, hereafter, the Department (the SIP agency) did not have the regulatory power to enforce their implementation. The group decided to continue regulating air emissions from area and point sources and to consider a high-enhanced

motor vehicle inspection program. To date, the high enhanced inspection program has not been implemented. The following table indicates the RACT measures that were adopted in the SIP and complied with Section of 172 (c)(1) requirements.

#### VOC EMISSION CONTROL MEASURES (Using RACT) AND EXPECTED REDUCTIONS FOR THE 2002 RATE PROGRESS PLAN (Delaware RPP SIP—December, 2000)

Control Measures and Regulations	Expected VOC Emission Reduction Tons Per Day		
	Kent	New Castle	Total NAA

#### Point Source Controls

<i>RACT "Catch Up: in Kent City</i>			
Solvent Metal Cleaning Surface Coating of Metal Furniture Leaks from Synthetic Organic Chemical, Polymer and Resin Manufacture Equipment.			

	0.537	N/A	0.537
	0.037	N/A	0.037
	0.004	N/A	0.004

Stationary Area Source Controls	Expected VOC Emission Reduction Tons Per Day		
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<i>RACT "Catch Up: in Kent City</i>	Kent	New Castle	Total NAA
Solvent Metal Cleaning Cutback Asphalt			
	0.136	N/A	0.136
	0.026	N/A	0.026

<i>New and Revised RACT Regulations</i>			
Stage I Vapor Recovery-Gas Disp. Facilities Emulsified Asphalt Motor Vehicle Refinishing Offset Lithography Aerospace Coatings Stage II Vapor Recovery			

	0.493	0.159	0.652
	0.026	0.027	0.053
	0.266	1.058	1.324

# GENERAL NOTICES

1169

	0.080	0.001	0.081
	N/A	0.033	0.033
	0.447	1.435	1.882
Total	2.052	2.713	4.765

The above table shows the reductions of VOC that would be achieved by 2002 and prior to the attainment date. These reductions are enforceable by the adoption of Air Regulation 12. Air Regulation 24 provides RACT requirements on certain NO<sub>x</sub> sources in Delaware that reduces 2.32 tons of NO<sub>x</sub> by 2002, three years prior to the attainment date.

### Expected Emission Reductions from Transportation Control Measures

Although there are no enforceable measures in the Delaware SIP to reduce emissions from transportation sources, measures are included in the long range transportation plans of WILMAPCO (Wilmington Area Planning Council) and the Dover/Kent County Metropolitan Planning Organization. Some of the measures have already been put in respective transportation improvement programs and will be implemented prior to the attainment date. An analysis was performed by the Delaware Department of Transportation (DeDOT) concerning emission reductions from TCM needed to overcome a conformity shortfall that existed with the 2005 SIP budget. These programs, because of monetary budget constraints and enforcement issues, would disqualify some of the programs listed below as RACM. The measures were not adopted in the SIP for two reasons: first, the Department does not have the authority to regulate other agencies such as the Department of Transportation that would implement most of the measures considered and second, the emission reductions achieved by the measures would be appreciably small and have little effect, if any, in advancing the goal of attaining the air quality standards prior to 2005.

**PRESENTATION TO THE DELAWARE  
AIR QUALITY MOBILE SOURCE COMMITTEE  
EMISSION REDUCTION STRATEGIES,  
PROGRAMS, CONTROLS  
In Place by the Year 2005  
(Prepared by the Delaware Department of  
Transportation – 2/23/01)**

Transportation Control Measure	County	NO <sub>x</sub> Reductions Ton/Day	VOC Reductions Tons/Day
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Improved Transit (increased routes)	New Castle	0.1143	0.0645
	Kent	0.0159	0.0112

Replacing Older Public Transit Buses with New Buses	New Castle	0.0038	0.0009
	Kent	0.0009	0.0006

HOV Restrictions	New Castle County	0.1889	0.1066
	Kent County	0.0340	0.0241

Employer Based Transportation Plans and Programs (Ride Share, Shuttles)	New Castle	0.1637	0.0924
	Kent	0.0464	0.0329
Trip Reduction Ordinances	New Castle	0.0201	0.00
	Kent	N/A	N/A
Traffic Flow Improvements	New Castle	0.2666	0.9776
	Kent	0.0066	0.0242

Transportation Control Measure	County	NO <sub>x</sub> Reductions Tons/Day	VOC Reductions Tons/Day
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Pedestrian and Bikeways	New Castle	0.0175	0.0172
	Kent	0.0058	0.0057
Programs to Control Extended Idling of Vehicles	New Castle	0.0026	0.0005
	Kent	0.0007	0.0001
Programs to Encourage Removal of Pre 1980 Model Year Vehicles (Scrap-page)	New Castle	0.1249	0.0720
Removal of 25% of pre-80 light duty registered			

	Kent	0.0618	0.0327
Alternative Fuel Vehicles	New Castle	0.0139	0.0078
	Kent	0.0118	0.0083
	<b>Totals for New Castle and Kent Counties</b>	1.1	1.48

As stated above some of the measures listed have been adopted by the two Metropolitan Planning Organizations. The TCM total reductions are 1.1 tons per day for NO<sub>x</sub> and 1.48 tons per day for VOC which are not significant additional reductions that the Department would need to demonstrate attainment of the one-hour standard nor would they help attain the standard sooner than 2005. Nevertheless, by the year 2005 programs such as improved transit service, ride share, trip reduction ordinances, traffic flow improvements, pedestrian and bikeway facilities construction will all be funded and included in the transportation improvement programs in New Castle and Kent counties.

Some of the above transportation control measures that were considered by transportation planners as effective ways to reduce emissions were not financially feasible and cannot be considered reasonable available control measures. High occupancy vehicle restrictions or constructing HOV lanes are not cost effective in either New Castle or Kent counties. One mile of new construction of an additional lane on Interstate 95, 295 or 495 in the Wilmington area with HOV restrictions is estimated to cost \$3.6 million. The cost/benefit or cost per ton of NO<sub>x</sub> reduction is \$16.1 million per ton per mile and \$27.6 million per ton per mile for VOC. The benefit to the motorists regarding trip time savings would only be approximately 5 minutes and not a sufficient incentive to carpool and use the HOV lane. Therefore, in Delaware the HOV lane restrictions would be extremely expensive investment with very little air quality or time savings benefits. Another program, the vehicle scrappage initiative would use transportation funding to encourage a vehicle owner to take his pre-1981 vehicle owner off the road by providing a rebate towards a newer vehicle. To be fair and because there are only three counties in the State of Delaware, the program should cover the entire state fleet of pre-1980 passenger vehicles. There are only about 15,000 pre-1980 vehicles in the state. However, if the target goal of 25% of applicable vehicles were taken off the road and the program was fully funded at even at the meager sum of \$500 per vehicle the cost would be approximately \$1.6 million. However the cost/benefit or cost per ton of reductions of NO<sub>x</sub> and VOC would be \$6.8 million and \$10.9 million respectively. When compare to the average cost per ton for NO<sub>x</sub> and VOC reductions for the RACT measures listed

above at \$2,000, the comparison is significantly unfavorable to the TCM.

### Summary

Delaware has complied with the requirements of Clean Air Act Section 172 (c)(1). As noted above, EPA guidance states that only control measures that produce sufficient benefits to advance the attainment date can be considered to be RACM. The guidance states that cost can be a factor in determining whether a measure is reasonable. EPA guidance notes that measures that are not enforceable are not RACM. As has been shown in the table above, TCM only provide small reductions in ozone precursor emissions (VOC and NO<sub>x</sub>), and have very high costs. Moreover, the Department did not adopt any TCM in the State Implementation Plan because of the inability to enforce these measures.

**DELAWARE STATE FIRE  
PREVENTION COMMISSION****Notice Of Public Hearing**

The Delaware State Fire Prevention Commission will hold a hearing pursuant to 16 Del. C. §6603 and 29 Del. C. Ch. 101, to receive public comment regarding a proposed change to the State Fire Prevention Regulations. The Commission is proposing to add a Criminal History Records Check Policy, to the Ambulance Service Regulations as follows:

Add Section 3 - 1. Criminal History Records Check Policy

**Date, Time And Place Of Public Hearing**

**DATE:** Tuesday, November 20, 2001

**TIME:** 9:00 AM and 1:00 PM

**PLACE:** Commission Chamber  
Delaware State Fire School  
Delaware Fire Service Center  
1463 Chestnut Grove Road  
Dover, Delaware 19904

Persons may view the proposed addition to the Regulations between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, at the Delaware State Fire Prevention Commission Office, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware, 19904.

Persons may present their views in writing by mailing their views to the Commission at the above address prior to the hearing or by offering testimony at the public hearing. If the number of persons desiring to testify at the public hearing is large, the amount of time allotted to each speaker will be limited.

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**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF NURSING**

The Delaware Joint Practice Committee in accordance with 24 Del. Code, Subsection 1906(19) has proposed to revise the Rules and Regulations governing Independent Practice/Prescriptive Authority for Advanced Practice Nurses (APN).

The proposed changes detail the complaint process related to APN's Independent Practice/Prescriptive Authority and define the Joint Practice Committee's process of APN members, officers, and meetings.

A public hearing will be held on Tuesday, December 18, 2001 at 5:30 p.m. in the second floor conference room C-216 at Delaware Technical and Community College, Stanton Campus, 400 Christiana-Stanton Road, Newark, Delaware.

Anyone desiring a copy of the proposed revised section of the Rules and Regulations may obtain a copy from the Delaware Board of Nursing, 861 Silver Lake Blvd., Cannon Building, Suite 203, Dover, DE 19904, (302) 744-4516. Persons desiring to submit written comments on the revised rules and regulations may forward these comments to the above address. The final date to receive written comments will December 18, 2001.

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**STATE BOARD OF EDUCATION**

The State Board of Education will hold its monthly meeting on Thursday, November 15, 2001 at 9:00 a.m. in the Townsend Building, Dover, Delaware.

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**DEPARTMENT OF FINANCE  
DIVISION OF REVENUE  
DELAWARE STATE LOTTERY OFFICE**

The Lottery proposes this Regulation amendment pursuant to 29 Del. C. §4805(a). The Lottery will accept written comments from November 1, 2001 through November 30, 2001. The Lottery will hold a public hearing on the proposed amendments on November 26, 2001 at 10:00 a.m. at the Lottery Office, Second Floor Conference Room, 1575 McKee Road, Suite 102, Dover, DE 19904-1903. Written comments should be submitted to the Lottery at the above address and noted to the attention of Lottery Director Wayne Lemons.

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**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES  
DIVISION OF PUBLIC HEALTH**

These regulations, "The State of Delaware Rules and Regulations Pertaining to the Practice of Non-Nurse

Midwifery," replace by recision the current "State of Delaware Rules and Regulations Pertaining to the Practice of Certified Midwifery" previously adopted on April 17, 1978 and most recently amended May 15, 1985.

The new regulations establish and define conditions under which individuals may be granted permits to practice direct entry/non-nurse midwifery in the State of Delaware. The Department of Health and Social Services, through the Division of Public Health, will recognize and issue a permit to practice midwifery for direct entry/non-nurse midwives.

#### **Notice Of Public Hearing**

The Community Health Care Access Section, Division of Public Health, Department of Health & Social Services, will hold a public hearing to discuss the proposed adoption of new "State of Delaware Rules and Regulations Pertaining to the Practice of Non-Nurse Midwifery." The public hearing will be held on November 28, 2001, at 3:00 PM, in Room 400B, Delaware Technical and Community College, Terry Campus, Route 13 & Denny's Road, Dover, Delaware.

Information concerning the proposed regulation is available at the following location:

Community Health Care Access Section  
Jesse Cooper Building  
Federal and Water Streets  
Dover, Delaware 19901  
Telephone: (302) 739-4735

Anyone wishing to present his or her oral comments at this public hearing should contact Dave Walton at (302) 739-4700 by November 27, 2001. Anyone wishing to submit written comments as a supplement to, or in lieu of, oral testimony should submit such comments by December 3, 2001, to:

Dave Walton, Hearing Officer  
Division of Public Health  
P.O. Box 637  
Dover, Delaware 19903-0637

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#### **DIVISION OF PUBLIC HEALTH**

#### **Application and Operation of Managed Care Organizations (MCO)**

These regulations amend regulations previously adopted on November 16, 1998 and most recently amended July 1, 2001. They are to be adopted in accordance with Chapter 91, Section 9110, Title 16, Delaware Code. They will supersede all previous regulations concerning the Application and Operation of Managed Care Organizations (MCO).

#### **Summary Of Proposed Regulations**

The amendments to these regulations establish and define conditions of elements contained within the Patient Bill of Rights (SB181). The definition section of the regulations is expanded to include language from SB181 relating to: balance billing; standing referrals to health care specialists; clinical trials; the addition of pharmacy services as a basic health service; and, the broadening of the definition of emergency medical condition. The regulations have been revised to clarify: referrals to non-network providers and payment for same; minimal standing referral procedure inclusions; and, clinical trial requirements.

#### **Notice Of Public Hearing**

The Office of Health Facilities Licensing and Certification, Division of Public Health, Department of Health and Social Services will hold public hearings to discuss proposed revisions to Delaware Regulations for Managed Care Organizations (MCOs).

The public hearings will be held November 26, 2001 at 10:00 AM in the third floor conference room, Jesse Cooper Building, Federal and Water Streets, Dover, Delaware and at 10:00 AM on November 29, 2001 in the first (1st) floor conference room, Delaware Fire Service Center, 2307 MacArthur Road, New Castle, DE 19720.

Copies of the proposed regulations are available for review by calling the following location:

Office of Health Facilities Licensing and Certification  
2055 Limestone Road, Suite 200  
Wilmington, DE 19808  
Telephone: (302) 995-8521

Anyone wishing to present his or her oral comments at this hearing should contact Ms. Vanette Seals at (302) 995-8521 by November 21, 2001. Anyone wishing to submit written comments as a supplement to, or in lieu of oral testimony should submit such comments by December 3, 2001 to:

Dave Walton, Hearing Officer  
Division of Public Health  
P.O. Box 637  
Dover, Delaware 19903-0637

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#### **DIVISION OF SOCIAL SERVICES**

#### **PUBLIC NOTICE Food Stamps Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the

authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Food Stamps Program is proposing to implement policy changes to the following section of the Division of Social Services Manual (DSSM): DSSM 9060. These changes are being made as a result of the following rule: Food Stamp Program: Noncitizen Eligibility, and Certification Provisions of PL 104-193, as amended by PL 104-208, 105-33 and 105-185, Final Rule. This rule implements several provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and amended by the Omnibus Consolidated Appropriations Act of 1997 (OCA), the Balanced Budget Act of 1997 (BBA), and the Agricultural Research, Extension and Education Reform Act of 1998 (AREERA).

**Summary of Changes:**

- Includes cooling costs in the heating standard utility allowance that creates a heating and cooling allowance.
- Requires a household to have two, non-heat or cooling, utility expenses to use the low utility standard.
- Allows a household living in a public housing unit or other rental housing unit which has central utility meters and charges the household only for excess heating or cooling costs to receive the LUA (limited utility allowance) provided the household has another utility like a phone or gas cooking.
- Allows a household to claim the shelter costs of the home if not occupied by the household because of training away from home.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Mary Ann Daniels, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by November 30, 2001.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

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**DIVISION OF SOCIAL SERVICES**

**PUBLIC NOTICE**

**Medicaid/Medical Assistance Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the

Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to implement a policy change to the following section of the Division of Social Services Manual (DSSM): DSSM 20620.1. Effective October 1, 2001, this change, approved and funded by the State Legislature, will increase the monthly personal needs allowance protected for individuals who are eligible for Medicaid and reside in nursing facilities.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Mary Ann Daniels, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by November 30, 2001.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

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**DEPARTMENT OF INSURANCE**

**NOTICE OF PUBLIC HEARING**

**Insurance Commissioner Donna Lee H. Williams**

Hereby gives notice that a PUBLIC HEARING will be held on Tuesday November 27, 2001 at 10:00 a.m. in the Executive Conference Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The hearing is to consider implementation of Regulation No. 85 (Proposed) entitled "**Valuation Of Life Insurance Policies**"

The purpose of the Regulation is to select mortality factors and rules for their use, set rules concerning a minimum standard for the valuation of plans with non-level premiums or benefits, and set rules concerning a minimum standard for the valuation of plans with secondary guarantees. The method for calculating basic reserves defined in the proposed regulation will constitute the Commissioners' Reserve Valuation Method for policies to which the proposed regulation is applicable and will conform to similar standards applicable nationally.

The hearing will be conducted in accordance with the Delaware Administrative Procedures Act, 29 *Del. C.* Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the Hearing. Written comments must be received by the Department of Insurance no later than Friday, November 23, 2001, and should be addressed to

Deputy Attorney General Michael J. Rich, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904. Those wishing to testify or give an oral statement must notify Michael J. Rich at (302) 739-4251, Ext. 171 no later than Friday, November 23, 2001.

**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL  
DIVISION OF WATER RESOURCES**

**Total Maximum Daily Load (TMDL) for Nutrients in the  
Appoquinimink Watershed, Delaware**

**Brief Synopsis of the Subject, Substance, and Issues**

The Department of Natural Resources and Environmental Control (DNREC) is proposing to adopt a Total Maximum Daily Load (TMDL) Regulation for nutrients in the Appoquinimink Watershed based upon an expanded version of the TMDL imposed by the Environmental Protection Agency (EPA) in 1998. A TMDL sets a limit on the amount of a substance that can enter a water body while still assuring that applicable water quality standards are met and beneficial stream uses are protected. A TMDL is composed of three components, including a Waste Load Allocation (WLA) for point source discharges, a Load Allocation (LA) for non-point sources, and a Margin of Safety (MOS) to account for uncertainties.

**Notice of Public Comment**

A public workshop will be held on Wednesday, December 5, 2001, between 3:30 and 5:30 p.m., at the Volunteer Hose Company of Middletown Hall, 27 West Green Street, Middletown, DE 19709.

A public hearing will be held on Wednesday, December 5, 2001, between 6:00 and 8:00 p.m., at the Volunteer Hose Company of Middletown Hall, 27 West Green Street, Middletown, DE 19709. The hearing record will remain open until 4:30 p.m., December 19, 2001. Please bring written comments to the hearing or send them to Rod Thompson, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE, 19901; facsimile: (302) 739-6242. All written comments must be received by 4:30 p.m., December 19, 2001. For planning purposes, those individuals wishing to make oral comments at the public hearing are requested to notify Marianne Brady, (302) 739-4590; facsimile: (302) 739-6140; email: marianne.brady@state.de.us by 12:00 p.m., December 5, 2001.

Additional information and supporting technical documents may be obtained from the Watershed Assessment Section, Division of Water Resources, Department of Natural Resources and Environmental Control, Silver Lake Plaza – Suite 220, 820 Silver Lake Blvd, Dover, DE 19904-2464, (302) 739-4590, facsimile: (302) 739-6140.

**Prepared By:**

Samuel P. Myoda, Watershed Assessment Section, (302) 739-4590.

**DEPARTMENT OF PUBLIC SAFETY  
DIVISION OF MOTOR VEHICLES AND  
DIVISION OF HIGHWAY SAFETY**

Please take notice, pursuant to 29 Del. C. Chapter 101, the Delaware Department of Public Safety proposes to promulgate a new policy regulation, number 91, to regulate the fees associated with the costs of the Ignition Interlock Program. After surveying the fees associated with similar programs in surrounding states, it became obvious that the fees in Delaware were below the industry standards. The purpose of this policy regulation is to increase the fees to an amount that is reasonable and will allow the vendors to continue to operate at a profit in Delaware.

The Department of Public Safety will hold a hearing pursuant to 29 Del. C. Chapter 101 concerning the adoption of Policy Regulation 91, entitled "Ignition Interlock Device Installation, Removal, and Monthly Monitoring and Calibration Fees." The Department will receive public comment regarding the proposed Department of Public Safety Policy Regulation.

Department of Public Safety and Division of Highway Safety Policy Regulation Number 91 Concerning: Ignition Interlock Device Installation, Removal, and Monthly Monitoring and Calibration Fees.

**Date, Time and Place of Public Hearing**

DATE: November 29, 2001  
TIME: 10:00 a.m.  
PLACE: Main Conference Room, 2<sup>nd</sup> Floor  
Department of Public Safety  
Public Safety Building  
303 Transportation Circle  
Dover, DE 19901

Persons may view the proposed Policy Regulation between the hours of 8:00 a.m. to 4:00 p.m., Monday through Friday, at the Division of Highway Safety, in the

Public Safety Building, 2<sup>nd</sup> floor, 303 Transportation Circle, Suite 201, Dover, DE 19901.

Persons may present their views in writing by mailing them to Lisa Moore, DUI Programs Coordinator, Division of Highway Safety, PO Box 1321, Dover, DE 19903. Written comments will be accepted until the close of business on Monday, December 3, 2001. Persons may also present their views by offering testimony at the public hearing. If the number of persons desiring to testify at the public hearing is large, the amount of time allotted to each speaker will be limited.

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**DIVISION OF STATE POLICE**  
**Public Notice**

Notice is hereby given that the Department of Public Safety, Division of State Police, in accordance with 24 Del C Section 5404(a) proposes to adopt Rules & Regulations. These Rules & Regulations will regulate the Bounty Hunters/Bail Enforcement Agents. If you wish to view the complete Rules & Regulations, contact Ms. Peggy Anderson at (302) 739-5991. Any persons wishing to present views may submit them in writing, by November 31, 2001, to Delaware State Police, Detective Licensing, P.O. Box 430, Dover, Delaware, 19903. There will be a public hearing on Thursday, November 28, 2001, at the Public Safety Building, Main Conference Room – 2<sup>nd</sup> Floor, 303 Transportation Circle, Dover, Delaware, 19901-0818.

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**EXECUTIVE DEPARTMENT**  
**DELAWARE ECONOMIC DEVELOPMENT OFFICE**  
**Notice Of Public Hearing On Proposed Energy**  
**Alternatives Program Regulation**

In accordance with procedures set forth in 29 Del. C. Ch. 11, Subch. III and 29 Del. C. Ch. 101, the Director of the Delaware Economic Development Office is proposing to adopt a regulation entitled "Energy Alternatives Program Regulation" for the administration and operation of the Energy Alternatives Program established in 26 Del. C. § 1014(a) as part of The Electric Utility Restructuring Act of 1999. The Energy Alternatives Program is designed to introduce renewable energy technologies into the Delaware market by reducing the net system costs through the use of rebates. The proposed regulation sets forth the definition of certain terms used in the Energy Alternatives Program and describes (i) the eligibility requirements for persons desiring to receive a rebate designed to defray a part of certain purchase and installation costs of certain solar photovoltaic

electricity generating systems, certain solar water heating systems, certain geothermal heat pump systems, and certain wind turbine systems (ii) the photovoltaic electricity generating, solar hot water heating, geothermal, and wind turbine systems that now qualify for rebates, (iii) how to request a rebate, (iv) how rebate requests will be evaluated and processed and the rebates disbursed, and (v) other administrative features of the Energy Alternatives Program.

Members of the public may receive a copy of the proposed regulation at no charge by United States Mail by writing or calling Robert Propes, Delaware Economic Development Office, Carvel State Office Building, 10<sup>th</sup> Floor, 820 North French Street, Wilmington, DE, 19801-3509, phone (302) 577-8708. The Director of the Delaware Economic Development Authority, or an employee of such agency designated by the Director, will hold a public hearing at which members of the public may present comments on the proposed regulation on Thursday, December 6, 2001 in the auditorium of the Carvel State Office Building, 820 N. French Street, Wilmington, DE, 19801 from 5:00 PM to 7:00 PM. Additionally, members of the public may present written comments on the proposed regulation by submitting such written comments to Robert Propes at the address of the Delaware Economic Development Office set forth above. Written comments must be received on or before December 3, 2001.

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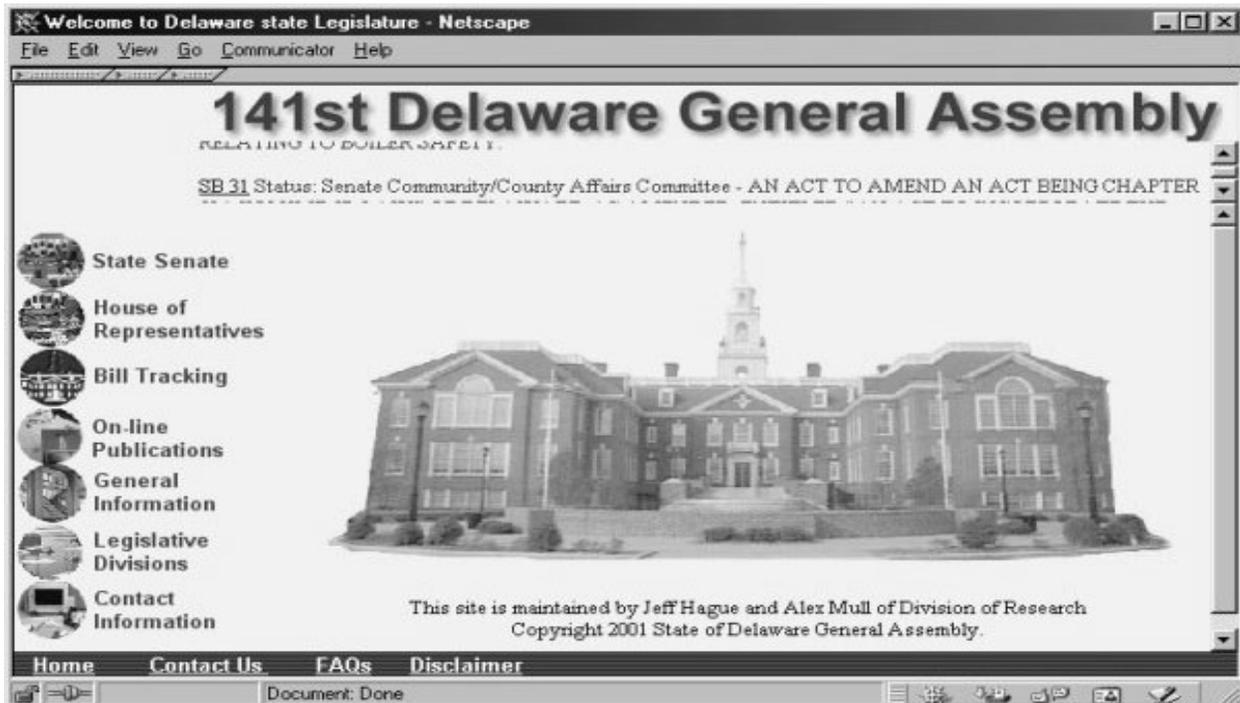
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